AMENDMENTS SUBMITTED

THE COMPREHENSIVE REGULATORY REFORM ACT OF 1995

DOMENICI (AND BOND) AMENDMENT NO. 1509

(Ordered to lie on the table.)

Mr. DOMENICI (for himself and Mr. BOND) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill (S. 343) to reform the regulatory process, and for other purposes; as follows:

AMENDMENT NO. 1509

At the appropriate place in the Dole substitute No. 1487, add the following new title:

TITLE II—AGENCY RESPONSIVENESS TO SMALL BUSINESSES

Subtitle A—Small Business Advocacy Review

SEC. 201. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) AGENCY.—The term ''agency'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the Environmental Protection Agency; and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the Occupational Safety and Health Administration of the Department of Labor.

(2) AGENCY HEAD.—The term ''agency head'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the Administrator of the Environmental Protection Agency; and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the Assistant Secretary for Occupational Safety and Health of the Department of Labor.

(3) CHAIRPERSON.—The term ''chairperson'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the chairperson of such review panel designated under section 202(a); and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the chairperson of such review panel designated under section 202(b).

(4) CHIEF COUNSEL FOR ADVOCACY.—The term ''Chief Counsel for Advocacy'' means the Chief Counsel for Advocacy of the Small Business Administration.

(5) FINAL RULE.—The term ''final rule'' means any final rule or interim final rule issued by an agency for which a review panel has been established under section 202(c)(2)(A).

(6) OFFICE.—The term ''Office'' means the Office of Advocacy of the Small Business Administration.

(7) REVIEW PANEL.—The term ''review panel'' means—

(A) with respect to a significant rule of the Environmental Protection Agency, an Environmental Small Business Advocacy Review Panel established under section 202(c)(2)(A); and

(B) with respect to a significant rule of the Occupational Safety and Health Administration of the Department of Labor, an Occupational Safety and Health Small Business Advocacy Review Panel established under section 202(c)(2)(A).

(8) RULE.—The term ''rule''—

(A) means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of the agency; and

(B) does not include any rule that is limited to agency organization, management, or personnel matters.

(9) SIGNIFICANT RULE.—The term ''significant rule'' means any rule proposed by an agency that the chairperson, in consultation with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, reasonably estimates would have—

(A) an annual aggregate impact on the private sector in an amount equal to not less than $50,000,000; and

(B) an impact on small businesses.

(10) SMALL BUSINESS.—The term ''small business'' has the same meaning as the term ''small business concern'' in section 3 of the Small Business Act.

SEC. 202. SMALL BUSINESS ADVOCACY CHAIRPERSONS.

(a) CHAIRPERSON OF ENVIRONMENTAL REVIEW PANELS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall designate an employee of the Environmental Protection Agency, who is a member of the Senior Executive Service (as that term is defined in section 2101a of title 5, United States Code) and whose immediate supervisor is appointed by the President, to serve as the chairperson of each Environmental Small Business Advocacy Review Panel and to carry out this subtitle with respect to the Environmental Protection Agency.

(2) DISABILITY OR ABSENCE.—If the employee designated to serve as chairperson under paragraph (1) is unable to serve as chairperson because of disability or absence, the Administrator of the Environmental Protection Agency shall designate another employee who meets the qualifications of paragraph (1) to serve as chairperson.

(b) CHAIRPERSON OF OSHA REVIEW PANELS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Assistant Secretary for Occupational Safety and Health of the Department of Labor shall designate an employee of the Occupational Safety and Health Administration of the Department of Labor, who is a member of the Senior Executive Service (as that term is defined in section 2101a of title 5, United States Code) and whose immediate supervisor is appointed by the President, to serve as the chairperson of each Occupational Safety and Health Small Business Advocacy Review Panel and to carry out the purposes of this subtitle with respect to the Occupational Safety and Health Administration.

(2) DISABILITY OR ABSENCE.—If the employee designated to serve as chairperson under paragraph (1) is unable to serve as chairperson because of disability of absence, the Assistant Secretary for Occupational Safety and Health of the Department of Labor shall designate another employee who meets the qualifications of paragraph (1) to serve as chairperson.

(c) DUTIES OF THE CHAIRPERSON.—

(1) INITIAL DETERMINATION AND NOTIFICATION.—

(A) TIMING.—The chairperson shall take the actions described in subparagraph (B) not later than 45 days before the earlier of—

(i) the date of publication in the Federal Register by an agency of a general notice of proposed rulemaking under section 553(b) of title 5, United States Code, or any other provision of law; or

(ii) the date of publication in the Federal Register by an agency of a proposed rule.

(B) ACTIONS.—With respect to a proposed rule that is the subject of a publication described in clause (i) or (ii) of subparagraph (A), the chairperson shall—

(i) determine whether the subject proposed rule constitutes a significant rule, as defined in section 201(9); and

(ii) if the proposed rule is determined to constitute a significant rule, notify the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget and the Chief Counsel for Advocacy to appoint review panel members for evaluation of the subject significant rule.

(2) ESTABLISHMENT OF REVIEW PANELS.—

(A) IN GENERAL.—Not later than 15 days after receiving notice under paragraph (1)(B)(ii), or such longer period as the chairperson may allow, review panel members shall be appointed by the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, the Chief Counsel for Advocacy, and the chairperson in accordance with section 203(b).

(B) EXCEPTIONS.—A review panel shall be established in accordance with subparagraph (A) unless the chairperson, in consultation with the Chief Counsel for Advocacy, determines (and notifies the agency in writing of such determination) that—

(i) a good faith effort to secure enough non-Federal employee review panel members necessary to constitute a quorum with respect to the subject significant rule was unsuccessful; and

(ii) compliance with this subtitle is not required with respect to the subject significant rule due to a lack of availability of private sector interests.

(d) DUTIES REGARDING FINAL RULE.—

(1) IN GENERAL.—Not later than 45 days before the issuance of a significant final rule, the chairperson shall—

(A) notify panel members of the intent of the agency to issue a final rule;

(B) provide panel members with a dated draft of the final rule to be issued;

(C) solicit comments from panel members in connection with the duties of the review panel described in section 203(a); and

(D) if the chairperson determines that such action is necessary, call one or more meetings of the review panel and, if a quorum is present, direct the review panel to review, discuss, or clarify any issue related to the subject final rule or the preparation of the report under paragraph (2).

(2) REPORT.—Except as provided in section 204(b), not later than 5 days before the issuance of a final rule, the chairperson shall submit a report in accordance with section 204(a).

SEC. 203. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) GENERAL DUTIES.—Before any publication described in clause (i) or (ii) of section 202(c)(1)(A) of a proposed significant rule, and again before the issuance of such rule as a final rule, the review panel shall, in accordance with this subtitle—

(1) provide technical guidance to the agency, including guidance relating to—

(A) the applicability of the proposed rule to small businesses;

(B) enforcement of and compliance with the rule by small businesses;

(C) the consistency or redundancy of the proposed rule with respect to other Federal, State, and local regulations and record-keeping requirements imposed on small businesses; and

(D) any other concerns posed by the proposed rule that may impact significantly upon small businesses; and

(2) evaluate each rule in the context of the requirements imposed under—

(A) subsections (b) and (c) of section 603, paragraphs (1) through (3) of section 604(a), section 604(b), and paragraphs (1) through (5) of section 609 of title 5, United States Code;

(B) sections 202 and 205 of the Unfunded Mandates Act of 1995 (Public Law 104–4);

(C) subsection (a) and paragraphs (1) through (12) of subsection (b) of section 1 of Executive Order No. 12866, September 30, 1993; and

(D) any other requirement under any other Act, including those relative to regulatory reform requirements that affect compliance, existing Federal or State regulations that may duplicate, overlap, or conflict with the significant rule, and the readability and complexity of rules and regulations.

(b) MEMBERSHIP.—Each review panel shall be composed of—

(1) the chairperson;

(2) not less than 1 nor more than 3 members appointed by the chairperson from among employees of the agency who would be responsible for carrying out the subject significant rule;

(3) 1 member appointed by the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget from among the employees of that office who have specific knowledge of or responsibilities relating to the regulatory responsibilities of the agency that would be responsible for carrying out the subject significant rule;

(4) 1 member appointed by the Chief Counsel for Advocacy from among the employees of the Office; and

(5) not less than 1 nor more than 3 members selected by the Chief Counsel for Advocacy from among individuals who are representatives of—

(A) small businesses that would be impacted by the significant rule;

(B) small business sectors or industries that would be especially impacted by the significant rule; or

(C) organizations whose memberships are comprised of a cross-section of small businesses.

(c) PERIOD OF APPOINTMENT; VACANCIES.—

(1) PERIOD OF APPOINTMENT.—Each review panel member, other than the chairperson, shall be appointed for a term beginning on the date on which the appointment is made and ending on the date on which the report or written record is submitted under section 204.

(2) VACANCIES.—Any vacancy on a review panel shall not affect the powers of the review panel, but shall be filled in the same manner as the original appointment.

(d) QUORUM.—A quorum for the conduct of business by a review panel shall consist of 1 member appointed from each of paragraphs (2) through (5) of subsection (b).

(e) MEETINGS.—

(1) IN GENERAL.—Subject to paragraph (2), the meetings of the review panel shall be at the call of the chairperson.

(2) INITIAL MEETING.—Not later than 15 days after all review panel members necessary to constitute a quorum have been appointed under subsection (b), the chairperson shall conduct the initial meeting of the review panel.

(f) POWERS OF REVIEW PANEL.—

(1) INFORMATION FROM FEDERAL AGENCIES.—A review panel may secure, directly from any Federal department or agency, such information as the review panel considers necessary to carry out this subtitle. Upon request of the chairperson, the head of such department or agency shall furnish such information to the review panel.

(2) POSTAL SERVICES.—A review panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(g) NONCOMPENSATION OF MEMBERS.—

(1) IN GENERAL.—Members of the review panel who are not officers or employees of the Federal Government shall serve without compensation.

(2) FEDERAL EMPLOYEES.—Members of the review panel who are officers or employees of the Federal Government shall serve without compensation in addition to that received for their services as officers or employees of the Federal Government.

(h) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to a review panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(i) CONSULTATION WITH OTHER ENTITIES.—In carrying out this subtitle, the chairperson shall consult and coordinate, to the maximum extent practicable, the activities of the review panel with each office of the agency that is responsible for the provision of data or technical advice concerning a significant rule.

SEC. 204. REPORT.

(a) IN GENERAL.—Except as provided in subsection (b), the chairperson shall, in accordance with section 202(d)(2), submit to the appropriate employees of the agency who would be responsible for carrying out the subject significant rule and to the appropriate committees of the Senate and the House of Representatives a report, which shall include—

(1) the findings and recommendations of the review panel with respect to the significant rule, including both the majority and minority views of the review panel members, regardless of the consensus of opinions that may derive from the meetings of the review panel; and

(2) recommendations regarding whether a survey with respect to the subject significant rule should be conducted under section 207, and—

(A) if so—

(i) a timeframe during which the survey should be conducted, taking into account the time required to implement the rule and to gather appropriate data; and

(ii) any recommendations of the review panel regarding the contents of the survey; and

(B) if not, the reasons why the survey is not recommended.

(b) FAILURE TO SUBMIT REPORT.—If the chairperson fails to submit a report under subsection (a), not later than the date on which the final rule is issued, the chairperson shall—

(1) prepare a written record of such failure detailing the reasons therefore; and

(2) submit a copy of such written record to the head of the agency and to the appropriate committees of the Congress.

SEC. 205. APPLICABILITY OF OTHER LAW; JUDICIAL REVIEW.

(a) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act do not apply to any review panel established in accordance with this subtitle.

(b) PROHIBITION ON JUDICIAL REVIEW.—No action or inaction of a review panel, including any recommendations or advice of a review panel or any procedure or process of a review panel, may be subject to judicial review by a court of the United States under chapter 7 of title 5, United States Code, or any other provision of law.

SEC. 206. MORATORIUM ON CERTAIN PUBLICATIONS.

Notwithstanding any other provision of this subtitle, no agency shall make any publication described in clause (i) or (ii) of section 202(c)(1)(A) until the initial chairperson appointed under section 202 has had an adequate opportunity to review the subject proposed rule in accordance with section 202(c)(1)(A).

SEC. 207. PEER REVIEW SURVEY.

(a) IN GENERAL.—If a review panel makes a recommendation in any report submitted under section 204(a) that a survey should be conducted with respect to a significant rule, the agency shall contract with a private sector auditing firm or other survey-related organization to conduct a survey of a cross-section of the small businesses impacted by the rule.

(b) CONTENTS OF SURVEY.—Each survey conducted under this section shall address the impact of the significant rule on small businesses, including—

(1) the applicability of the rule to various small businesses;

(2) the degree to which the rule is easy to read and comprehend;

(3) the costs to implement the rule;

(4) any recordkeeping requirements imposed by the rule; and

(5) any other technical or general issues related to the rule.

(c) AVAILABILITY OF SURVEY RESULTS.—The results of each survey conducted under this section shall be made available—

(1) to each interested Federal agency; and

(2) upon request, to any other interested party, including organizations, individuals, State and local governments, and the Congress.

Subtitle B—Regulatory Ombudsmen

SEC. 211. SMALL BUSINESS AND AGRICULTURE OMBUDSMEN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) BOARD.—The term 'Board' means a Small Business Regulatory Fairness Board established under subsection (c).

''(2) COVERED AGENCY.—The term 'covered agency' means any agency that, as of the date of enactment of the Comprehensive Regulatory Reform Act of 1995, has promulgated any rule for which a regulatory flexibility analysis was required under section 605 of title 5, United States Code, and any other agency that promulgates any such rule, as of the date of such promulgation.

''(3) OMBUDSMAN.—The term 'ombudsman' means a Regional Small Business and Agriculture Ombudsman designated under subsection (b).

''(4) REGION.—The term 'region' means any area for which the Administrator has established a regional office of the Administration pursuant to section 4(a).

''(5) RULE.—The term 'rule' has the same meaning as in section 601(2) of title 5, United States Code.

''(b) OMBUDSMAN.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Administrator shall designate in each region a senior employee of the Administration to serve as the Regional Small Business and Agriculture Ombudsman in accordance with this subsection.

''(2) DUTIES.—Each ombudsman designated under paragraph (1) shall—

''(A) on a confidential basis, solicit and receive comments from small business concerns regarding the enforcement activities of covered agencies;

''(B) based on comments received under subparagraph (A), annually assign and publish a small business responsiveness rating to each covered agency;

''(C) publish periodic reports compiling the comments received under subparagraph (A);

''(D) coordinate the activities of the Small Business Regulatory Fairness Board established under subsection (c); and

''(E) establish a toll-free telephone number to receive comments from small business concerns under subparagraph (A).''.

SEC. 212. SMALL BUSINESS REGULATORY FAIRNESS BOARDS.

Section 30 of the Small Business Act (as added by section 211 of this Act) is amended by adding at the end the following new subsection:

''(c) SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Administrator shall establish in each region a Small Business Regulatory Fairness Board in accordance with this subsection.

''(2) DUTIES.—Each Board established under paragraph (1) shall—

''(A) advise the ombudsman on matters of concern to small business concerns relating to the enforcement activities of covered agencies;

''(B) conduct investigations into enforcement activities by covered agencies with respect to small business concerns;

''(C) issue advisory findings and recommendations regarding the enforcement activities of covered agencies with respect to small business concerns;

''(D) review and approve, prior to publication—

''(i) each small business responsiveness rating assigned under subsection (b)(2)(B); and

''(ii) each periodic report prepared under subsection (b)(2)(C); and

''(E) prepare written opinions regarding the reasonableness and understandability of rules issued by covered agencies.

''(3) MEMBERSHIP.—Each Board shall consist of—

''(A) 1 member appointed by the President;

''(B) 1 member appointed by the Speaker of the House of Representatives;

''(C) 1 member appointed by the Minority Leader of the House of Representatives;

''(D) 1 member appointed by the Majority Leader of the Senate; and

''(E) 1 member appointed by the Minority Leader of the Senate.

''(4) PERIOD OF APPOINTMENT; VACANCIES.—

''(A) PERIOD OF APPOINTMENT.—

''(i) PRESIDENTIAL APPOINTEES.—Each member of the Board appointed under subparagraph (A) of paragraph (2) shall be appointed for a term of 3 years, except that the initial member appointed under such subparagraph shall be appointed for a term of 1 year.

''(ii) HOUSE OF REPRESENTATIVES APPOINTEES.—Each member of the Board appointed under subparagraph (B) or (C) of paragraph (2) shall be appointed for a term of 3 years, except that the initial members appointed under such subparagraphs shall each be appointed for a term of 2 years.

''(iii) SENATE APPOINTEES.—Each member of the Board appointed under subparagraph (D) or (E) of paragraph (2) shall be appointed for a term of 3 years.

''(B) VACANCIES.—Any vacancy on the Board—

''(i) shall not affect the powers of the Board; and

''(ii) shall be filled in the same manner and under the same terms and conditions as the original appointment.

''(5) CHAIRPERSON.—The Board shall select a Chairperson from among the members of the Board.

''(6) MEETINGS.—

''(A) IN GENERAL.—The Board shall meet at the call of the Chairperson.

''(B) INITIAL MEETING.—Not later than 90 days after the date on which all members of the Board have been appointed, the Board shall hold its first meeting.

''(7) QUORUM.—A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

''(8) POWERS OF THE BOARD.—

''(A) HEARINGS.—The Board or, at its direction, any subcommittee or member of the Board, may, for the purpose of carrying out the provisions of this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board determines to be appropriate.

''(B) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested to appear at any hearing of the Board. The per diem and mileage allowances for any witness shall be paid from funds available to pay the expenses of the Board.

''(C) INFORMATION FROM FEDERAL AGENCIES.—Upon the request of the Chairperson, the Board may secure directly from the head of any Federal department or agency such information as the Board considers necessary to carry out this section.

''(D) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(E) DONATIONS.—The Board may accept, use, and dispose of donations of services or property.

''(9) BOARD PERSONNEL MATTERS.—

''(A) COMPENSATION.—Members of the Board shall serve without compensation.

''(B) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.''.

SEC. 213. JUDICIAL REVIEW.

(a) PROHIBITION.—No action or inaction of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board, including any recommendations or advice of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board or any procedure or process of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board, may be subject to judicial review by a court of the United States under chapter 7 of title 5, United States Code, or any other provision of law.

(b) DEFINITIONS.—For purposes of this section—

(1) the term ''Regional Small Business and Agriculture Ombudsman'' means any ombudsman designated under section 30(b) of the Small Business Act, as added by section 211 of this Act.

(2) the term ''Small Business Regulatory Fairness Board'' means any board established under section 30(c) of the Small Business Act, as added by section 212 of this Act.

BAUCUS (AND OTHERS) AMENDMENT NO. 1510

(Ordered to lie on the table.)

Mr. BAUCUS (for himself, Mr. JOHNSTON, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. REID, Mrs. BOXER, Mr. MOYNIHAN, and Mr. GLENN) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

Beginning on page 42, strike line 3 and all that follows through page 44, line 14, and insert the following:

''§ 628. Petition for alternative method of compliance

HATFIELD AMENDMENTS NOS. 1511–1512

(Ordered to lie on the table.)

Mr. HATFIELD submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1511

At the end of the substitute amendment add the following new section:

SEC. ___. LOCAL EMPOWERMENT AND FLEXIBILITY.

(a) FINDINGS.—The Congress finds that—

(1) historically, Federal programs have addressed the Nation's problems by providing categorical financial assistance with detailed requirements relating to the use of funds;

(2) while the assistance described in paragraph (1) has been directed at critical problems, some program requirements may inadvertently impede the effective delivery of services;

(3) the Nation's local governments and private, nonprofit organizations are dealing with increasingly complex problems which require the delivery of many kinds of services;

(4) the Nation's communities are diverse, and different needs are present in different communities;

(5) it is more important than ever to provide programs that—

(A) promote more effective and efficient local delivery of services to meet the full range of needs of individuals, families, and society;

(B) respond flexibly to the diverse needs of the Nation's communities;

(C) reduce the barriers between programs that impede local governments' ability to effectively deliver services; and

(D) empower local governments and private, nonprofit organizations to be innovative in creating programs that meet the unique needs of their communities while continuing to address national policy goals; and

(6) many communities have innovative planning and community involvement strategies for providing services, but Federal, State, tribal governments, and local regulations often hamper full implementation of local plans.

(b) PURPOSES.—The purposes of this section are to—

(1) enable more efficient use of Federal, State, and local resources;

(2) place less emphasis in Federal service programs on measuring resources and procedures and more emphasis on achieving Federal, State, and local policy goals;

(3) enable local governments and private, nonprofit organizations to adapt programs of Federal financial assistance to the particular needs of their communities, by—

(A) drawing upon appropriations available from more than one Federal program; and

(B) integrating programs and program funds across existing Federal financial assistance categories; and

(4) enable local governments and private, nonprofit organizations to work together and build stronger cooperative partnerships to address critical service problems.

(c) DEFINITIONS.—For purposes of this section—

(1) the term ''approved local flexibility plan'' means a local flexibility plan that combines funds from Federal, State, local government or private sources to address the service needs of a community (or any part of such a plan) that is approved by the Flexibility Council under subsection (d);

(2) the term ''community advisory committee'' means such a committee established by a local government under subsection (h);

(3) the term ''Flexibility Council'' means the council composed of the—

(A) Assistant to the President for Domestic Policy;

(B) Assistant to the President for Economic Policy;

(C) Secretary of the Treasury;

(D) Attorney General;

(E) Secretary of the Interior;

(F) Secretary of Agriculture;

(G) Secretary of Commerce;

(H) Secretary of Labor;

(I) Secretary of Health and Human Services;

(J) Secretary of Housing and Urban Development;

(K) Secretary of Transportation;

(L) Secretary of Education;

(M) Secretary of Energy;

(N) Secretary of Veterans Affairs;

(O) Secretary of Defense;

(P) Director of Federal Emergency Management Agency;

(Q) Administrator of the Environmental Protection Agency;

(R) Director of National Drug Control Policy;

(S) Administrator of the Small Business Administration;

(T) Director of the Office of Management and Budget; and

(U) Chair of the Council of Economic Advisers.

(4) the term ''covered Federal financial assistance program'' means an eligible Federal financial assistance program that is included in a local flexibility plan of a local government;

(5) the term ''eligible Federal financial assistance program''—

(A) means a Federal program under which financial assistance is available, directly or indirectly, to a local government or a qualified organization to carry out the specified program; and

(B) does not include a Federal program under which financial assistance is provided by the Federal Government directly to a beneficiary of that financial assistance or to a State as a direct payment to an individual;

(6) the term ''eligible local government'' means a local government that is eligible to receive financial assistance under 1 or more covered Federal programs;

(7) the term ''local flexibility plan'' means a comprehensive plan for the integration and administration by a local government of financial assistance provided by the Federal Government under 2 or more eligible Federal financial assistance programs;

(8) the term ''local government'' means a subdivision of a State that is a unit of general local government (as defined under section 6501 of title 31, United States Code);

(9) the term ''priority funding'' means giving higher priority (including by the assignment of extra points, if applicable) to applications for Federal financial assistance submitted by a local government having an approved local flexibility program, by—

(A) a person located in the jurisdiction of such a government; or

(B) a qualified organization eligible for assistance under a covered Federal financial assistance program included in such a plan;

(10) the term ''qualified organization'' means a private, nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986; and

(11) the term ''State'' means the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, and any tribal government.

(d) PROVISION OF FEDERAL FINANCIAL ASSISTANCE IN ACCORDANCE WITH APPROVED LOCAL FLEXIBILITY PLAN.—

(1) PAYMENTS TO LOCAL GOVERNMENTS.—Notwithstanding any other provision of law, amounts available to a local government or a qualified organization under a covered Federal financial assistance program included in an approved local flexibility plan shall be provided to and used by the local government or organization in accordance with the approved local flexibility plan.

(2) ELIGIBILITY FOR BENEFITS.—An individual or family that is eligible for benefits or services under a covered Federal financial assistance program included in an approved local flexibility plan may receive those benefits only in accordance with the approved local flexibility plan.

(e) APPLICATION FOR APPROVAL OF LOCAL FLEXIBILITY PLAN.—

(1) IN GENERAL.—A local government may submit to the Flexibility Council in accordance with this subsection an application for approval of a local flexibility plan.

(2) CONTENTS OF APPLICATION.—An application submitted under this subsection shall include—

(A)(i) a proposed local flexibility plan that complies with paragraph (3); or

(ii) a strategic plan submitted in application for designation as an enterprise community or an empowerment zone under section 1391 of the Internal Revenue Code of 1986;

(B) certification by the chief executive of the local government, and such additional assurances as may be required by the Flexibility Council, that—

(i) the local government has the ability and authority to implement the proposed plan, directly or through contractual or other arrangements, throughout the geographic area in which the proposed plan is intended to apply; and

(ii) amounts are available from non-Federal sources to pay the non-Federal share of all covered Federal financial assistance programs included in the proposed plan; and

(C) any comments on the proposed plan submitted under paragraph (4) by the Governor of the State in which the local government is located;

(D) public comments on the plan including the transcript of at least 1 public hearing and comments of the appropriate community advisory committee established under subsection (h); and

(E) other relevant information the Flexibility Council may require to approve the proposed plan.

(3) CONTENTS OF PLAN.—A local flexibility plan submitted by a local government under this subsection shall include—

(A) the geographic area to which the plan applies and the rationale for defining the area;

(B) the particular groups of individuals, by service needs, economic circumstances, or other defining factors, who shall receive services and benefits under the plan;

(C)(i) specific goals and measurable performance criteria, a description of how the plan is expected to attain those goals and criteria;

(ii) a description of how performance shall be measured; and

(iii) a system for the comprehensive evaluation of the impact of the plan on participants, the community, and program costs;

(D) the eligible Federal financial assistance programs to be included in the plan as covered Federal financial assistance programs and the specific benefits that shall be provided under the plan under such programs, including—

(i) criteria for determining eligibility for benefits under the plan;

(ii) the services available;

(iii) the amounts and form (such as cash, in-kind contributions, or financial instruments) of nonservice benefits; and

(iv) any other descriptive information the Flexibility Council considers necessary to approve the plan;

(E) except for the requirements under subsection (g)(2)(C), any Federal statutory or regulatory requirement applicable under a covered Federal financial assistance program included in the plan, the waiver of which is necessary to implement the plan;

(F) fiscal control and related accountability procedures applicable under the plan;

(G) a description of the sources of all non-Federal funds that are required to carry out covered Federal financial assistance programs included in the plan;

(H) written consent from each qualified organization for which consent is required under paragraph (2)(B); and

(I) other relevant information the Flexibility Council may require to approve the plan.

(4) PROCEDURE FOR APPLYING.—(A) To apply for approval of a local flexibility plan, a local government shall submit an application in accordance with this subsection to the Governor of the State in which the local government is located.

(B) A Governor who receives an application from a local government under subparagraph (A) may, by no later than 30 days after the date of that receipt—

(i) prepare comments on the proposed local flexibility plan included in the application;

(ii) describe any State laws which are necessary to waive for successful implementation of a local plan; and

(iii) submit the application and comments to the Flexibility Council.

(C) If a Governor fails to act within 30 days after receiving an application under subparagraph (B), the applicable local government may submit the application to the Flexibility Council.

(f) REVIEW AND APPROVAL OF LOCAL FLEXIBILITY PLANS.—

(1) REVIEW OF APPLICATIONS.—Upon receipt of an application for approval of a local flexibility plan under this section, the Flexibility Council shall—

(A) approve or disapprove all or part of the plan within 45 days after receipt of the application;

(B) notify the applicant in writing of that approval or disapproval by not later than 15 days after the date of that approval or disapproval; and

(C) in the case of any disapproval of a plan, include a written justification of the reasons for disapproval in the notice of disapproval sent to the applicant.

(2) APPROVAL.—(A) The Flexibility Council may approve a local flexibility plan for which an application is submitted under this section, or any part of such a plan, if a majority of members of the Council determines that—

(i) the plan or part shall improve the effectiveness and efficiency of providing benefits

under covered Federal programs included in the plan by reducing administrative inflexibility, duplication, and unnecessary expenditures;

(ii) the applicant local government has adequately considered, and the plan or part of the plan appropriately addresses, any effect that administration of each covered Federal program under the plan or part of the plan shall have on administration of the other covered Federal programs under that plan or part of the plan;

(iii) the applicant local government has or is developing data bases, planning, and evaluation processes that are adequate for implementing the plan or part of the plan;

(iv) the plan shall more effectively achieve Federal financial assistance goals at the local level and shall better meet the needs of local citizens;

(v) implementation of the plan or part of the plan shall adequately achieve the purposes of this section and of each covered Federal financial assistance program under the plan or part of the plan;

(vi) the plan and the application for approval of the plan comply with the requirements of this section;

(vii) the plan or part of the plan is adequate to ensure that individuals and families that receive benefits under covered Federal financial assistance programs included in the plan or part shall continue to receive benefits that meet the needs intended to be met under the program; and

(viii) the local government has—

(I) waived the corresponding local laws necessary for implementation of the plan; and

(II) sought any necessary waivers from the State.

(B) The Flexibility Council may not approve any part of a local flexibility plan if—

(i) implementation of that part would result in any increase in the total amount of obligations or outlays of discretionary appropriations or direct spending under covered Federal financial assistance programs included in that part, over the amounts of such obligations and outlays that would occur under those programs without implementation of the part; or

(ii) in the case of a plan or part that applies to assistance to a qualified organization under an eligible Federal financial assistance program, the qualified organization does not consent in writing to the receipt of that assistance in accordance with the plan.

(C) The Flexibility Council shall disapprove a part of a local flexibility plan if a majority of the Council disapproves that part of the plan based on a failure of the part to comply with subparagraph (A).

(D) In approving any part of a local flexibility plan, the Flexibility Council shall specify the period during which the part is effective.

(E) Disapproval by the Flexibility Council of any part of a local flexibility plan submitted by a local government under this title shall not affect the eligibility of a local government, a qualified organization, or any individual for benefits under any Federal program.

(3) MEMORANDA OF UNDERSTANDING.—(A) The Flexibility Council may not approve a part of a local flexibility plan unless each local government and each qualified organization that would receive financial assistance under the plan enters into a memorandum of understanding under this paragraph with the Flexibility Council.

(B) A memorandum of understanding under this subsection shall specify all understandings that have been reached by the Flexibility Council, the local government, and each qualified organization that is subject to a local flexibility plan, regarding the approval and implementation of all parts of a local flexibility plan that are the subject of the memorandum, including understandings with respect to—

(i) all requirements under covered Federal financial assistance programs that are to be waived by the Flexibility Council under subsection (g)(2);

(ii)(I) the total amount of Federal funds that shall be provided as benefits under or used to administer covered Federal financial assistance programs included in those parts; or

(II) a mechanism for determining that amount, including specification of the total amount of Federal funds that shall be provided or used under each covered Federal financial assistance program included in those parts;

(iii) the sources of all non-Federal funds that shall be provided as benefits under or used to administer those parts;

(iv) measurable performance criteria that shall be used during the term of those parts to determine the extent to which the goals and performance levels of the parts are achieved; and

(v) the data to be collected to make that determination.

(4) LIMITATION ON CONFIDENTIALITY REQUIREMENTS.—The Flexibility Council may not, as a condition of approval of any part of a local flexibility plan or with respect to the implementation of any part of an approved local flexibility plan, establish any confidentiality requirement that would—

(A) impede the exchange of information needed for the design or provision of benefits under the parts; or

(B) conflict with law.

(g) IMPLEMENTATION OF APPROVED LOCAL FLEXIBILITY PLANS; WAIVER OF REQUIREMENTS.—

(1) PAYMENTS AND ADMINISTRATION IN ACCORDANCE WITH PLAN.—Notwithstanding any other law, any benefit that is provided under a covered Federal financial assistance program included in an approved local flexibility plan shall be paid and administered in the manner specified in the approved local flexibility plan.

(2) WAIVER OF REQUIREMENTS.—(A) Notwithstanding any other law and subject to subparagraphs (B) and (C), the Flexibility Council may waive any requirement applicable under Federal law to the administration of, or provision of benefits under, any covered Federal assistance program included in an approved local flexibility plan, if that waiver is—

(i) reasonably necessary for the implementation of the plan; and

(ii) approved by a majority of members of the Flexibility Council.

(B) The Flexibility Council may not waive a requirement under this paragraph unless the Council finds that waiver of the requirement shall not result in a qualitative reduction in services or benefits for any individual or family that is eligible for benefits under a covered Federal financial assistance program.

(C) The Flexibility Council may not waive any requirement under this paragraph—

(i) that enforces any constitutional or statutory right of an individual, including any right under—

(I) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(II) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(III) title IX of the Education Amendments of 1972 (86 Stat. 373 et seq.);

(IV) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); or

(V) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(ii) for payment of a non-Federal share of funding of an activity under a covered Federal financial assistance program; or

(iii) for grants received on a maintenance of effort basis.

(3) SPECIAL ASSISTANCE.—To the extent permitted by law, the head of each Federal agency shall seek to provide special assistance to a local government or qualified organization to support implementation of an approved local flexibility plan, including expedited processing, priority funding, and technical assistance.

(4) EVALUATION AND TERMINATION.—(A) A local government, in accordance with regulations issued by the Flexibility Council, shall—

(i) submit such reports on and cooperate in such audits of the implementation of its approved local flexibility plan; and

(ii) periodically evaluate the effect implementation of the plan has had on—

(I) individuals who receive benefits under the plan;

(II) communities in which those individuals live; and

(III) costs of administering covered Federal financial assistance programs included in the plan.

(B) No later than 90 days after the end of the 1-year period beginning on the date of the approval by the Flexibility Council of an approved local flexibility plan of a local government, and annually thereafter, the local government shall submit to the Flexibility Council a report on the principal activities and achievements under the plan during the period covered by the report, comparing those achievements to the goals and performance criteria included in the plan under subsection (e)(3)(C).

(C)(i) The Flexibility Council may terminate the effectiveness of an approved local flexibility plan, if the Flexibility Council, after consultation with the head of each Federal agency responsible for administering a covered Federal financial assistance program included in such, determines—

(I) that the goals and performance criteria included in the plan under subsection (e)(3)(C) have not been met; and

(II) after considering any experiences gained in implementation of the plan, that those goals and criteria are sound.

(ii) In terminating the effectiveness of an approved local flexibility plan under this subparagraph, the Flexibility Council shall allow a reasonable period of time for appropriate Federal, State, and local agencies and qualified organizations to resume administration of Federal programs that are covered Federal financial assistance programs included in the plan.

(5) FINAL REPORT; EXTENSION OF PLANS.—(A) No later than 45 days after the end of the effective period of an approved local flexibility plan of a local government, or at any time that the local government determines that the plan has demonstrated its worth, the local government shall submit to the Flexibility Council a final report on its implementation of the plan, including a full evaluation of the successes and shortcomings of the plan and the effects of that implementation on individuals who receive benefits under those programs.

(B) The Flexibility Council may extend the effective period of an approved local flexibility plan for such period as may be appropriate, based on the report of a local government under subparagraph (A).

(h) COMMUNITY ADVISORY COMMITTEES.—

(1) ESTABLISHMENT.—A local government that applies for approval of a local flexibility plan under this section shall establish a community advisory committee in accordance with this section.

(2) FUNCTIONS.—A community advisory committee shall advise a local government in the development and implementation of its local flexibility plan, including advice with respect to—

(A) conducting public hearings; and

(B) reviewing and commenting on all community policies, programs, and actions under the plan which affect low income individuals and families, with the purpose of ensuring maximum coordination and responsiveness of the plan in providing benefits under the plan to those individuals and families.

(3) MEMBERSHIP.—The membership of a community advisory committee shall—

(A) be comprised of—

(i) persons with leadership experience in the private and voluntary sectors;

(ii) local elected officials;

(iii) representatives of participating qualified organizations; and

(iv) the general public; and

(B) include individuals and representatives of community organizations who shall help to enhance the leadership role of the local government in developing a local flexibility plan.

(4) OPPORTUNITY FOR REVIEW AND COMMENT BY COMMITTEE.—Before submitting an application for approval of a final proposed local flexibility plan, a local government shall submit the final proposed plan for review and comment by a community advisory committee established by the local government.

(5) COMMITTEE REVIEW OF REPORTS.—Before submitting annual or final reports on an approved Federal assistance plan, a local government or private nonprofit organization shall submit the report for review and comment to the community advisory committee.

(i) TECHNICAL AND OTHER ASSISTANCE.—

(1) TECHNICAL ASSISTANCE.—(A) The Flexibility Council may provide, or direct that the head of a Federal agency provide, technical assistance to a local government or qualified organization in developing information necessary for the design or implementation of a local flexibility plan.

(B) Assistance may be provided under this paragraph if a local government makes a request that includes, in accordance with requirements established by the Flexibility Council—

(i) a description of the local flexibility plan the local government proposes to develop;

(ii) a description of the groups of individuals to whom benefits shall be provided under covered Federal assistance programs included in the plan; and

(iii) such assurances as the Flexibility Council may require that—

(I) in the development of the application to be submitted under this title for approval of the plan, the local government shall provide adequate opportunities to participate to—

(aa) individuals and families that shall receive benefits under covered Federal financial assistance programs included in the plan; and

(bb) governmental agencies that administer those programs; and

(II) the plan shall be developed after considering fully—

(aa) needs expressed by those individuals and families;

(bb) community priorities; and

(cc) available governmental resources in the geographic area to which the plan shall apply.

(2) DETAILS TO COUNCIL.—At the request of the Flexibility Council and with the approval of an agency head who is a member of the Council, agency staff may be detailed to the Flexibility Council on a nonreimbursable basis.

(j) FLEXIBILITY COUNCIL.—

(1) FUNCTIONS.—The Flexibility Council shall—

(A) receive, review, and approve or disapprove local flexibility plans for which approval is sought under this section;

(B) upon request from an applicant for such approval, direct the head of an agency that administers a covered Federal financial assistance program under which substantial Federal financial assistance would be provided under the plan to provide technical assistance to the applicant;

(C) monitor the progress of development and implementation of local flexibility plans;

(D) perform such other functions as are assigned to the Flexibility Council by this section; and

(E) issue regulations to implement this section within 180 days after the date of its enactment.

(2) REPORTS.—No less than 18 months after the date of the enactment of this Act, and annually thereafter, the Flexibility Council shall submit a report on the 5 Federal regulations that are most frequently waived by the Flexibility Council for local governments with approved local flexibility plans to the President and the Congress. The President shall review the report and determine whether to amend or terminate such Federal regulations.

(k) REPORT.—No later than 54 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress, a report that—

(1) describes the extent to which local governments have established and implemented approved local flexibility plans;

(2) evaluates the effectiveness of covered Federal assistance programs included in approved local flexibility plans; and

(3) includes recommendations with respect to local flexibility.

AMENDMENT NO. 1512

Add at the end of the substitute amendment the following new section:

SEC. ___. LOCAL EMPOWERMENT AND FLEXIBILITY.

(a) FINDINGS.—The Congress finds that—

(1) historically, Federal social service programs have addressed the Nation's social problems by providing categorical assistance with detailed requirements relating to the use of funds;

(2) while the assistance described in paragraph (1) has been directed at critical problems, some program requirements may inadvertently impede the effective delivery of social services;

(3) the Nation's local governments and private, nonprofit organizations are dealing with increasingly complex social problems which require the delivery of many kinds of social services;

(4) the Nation's communities are diverse, and different social needs are present in different communities;

(5) it is more important than ever to provide programs that—

(A) promote local delivery of social services to meet the full range of needs of individuals and families;

(B) respond flexibly to the diverse needs of the Nation's communities;

(C) reduce the barriers between programs that impede local governments' ability to effectively deliver social services; and

(D) empower local governments and private, nonprofit organizations to be innovative in creating programs that meet the unique needs of the people in their communities while continuing to address national social service goals; and

(6) many communities have innovative planning and community involvement strategies for social services, but Federal, State, and local regulations often hamper full implementation of local plans.

(b) PURPOSES.—The purposes of this section are to—

(1) enable more efficient use of Federal, State, and local resources;

(2) place less emphasis in Federal social service programs on measuring resources and procedures and more emphasis on achieving Federal, State, and local social services goals;

(3) enable local governments and private, nonprofit organizations to adapt programs of Federal assistance to the particular needs of low income citizens and the operating practices of recipients, by—

(A) drawing upon appropriations available from more than one Federal program; and

(B) integrating programs and program funds across existing Federal assistance categories; and

(4) enable local governments and private, nonprofit organizations to work together and build stronger cooperative partnerships to address critical social service problems.

(c) DEFINITIONS.—For purposes of this Act—

(1) the term ''approved local flexibility plan'' means a local flexibility plan that combines funds from Federal, State, local government, tribal government or private sources to address the social service needs of a community (or any part of such a plan) that is approved by the Community Enterprise Board under subsection (e);

(2) the term ''community advisory committee'' means such a committee established by a local government under subsection (g);

(3) the term ''Community Enterprise Board'' means the board established by the President that is composed of the—

(A) Vice President;

(B) Assistant to the President for Domestic Policy;

(C) Assistant to the President for Economic Policy;

(D) Secretary of the Treasury;

(E) Attorney General;

(F) Secretary of the Interior;

(G) Secretary of Agriculture;

(H) Secretary of Commerce;

(I) Secretary of Labor;

(J) Secretary of Health and Human Services;

(K) Secretary of Housing and Urban Development;

(L) Secretary of Transportation;

(M) Secretary of Education;

(N) Administrator of the Environmental Protection Agency;

(O) Director of National Drug Control Policy;

(P) Administrator of the Small Business Administration;

(Q) Director of the Office of Management and Budget; and

(R) Chair of the Council of Economic Advisers.

(4) the term ''covered Federal assistance program'' means an eligible Federal assistance program that is included in a local flexibility plan of a local government;

(5) the term ''eligible Federal assistance program''—

(A) means a Federal program under which assistance is available, directly or indirectly, to a local government or a qualified organization to carry out a program for—

(i) economic development;

(ii) employment training;

(iii) health;

(iv) housing;

(v) nutrition;

(vi) other social services; or

(vii) rural development; and

(B) does not include a Federal program under which assistance is provided by the Federal Government directly to a beneficiary of that assistance or to a State as a direct payment to an individual;

(6) the term ''eligible local government'' means a local government that is eligible to receive assistance under 1 or more covered Federal programs;

(7) the term ''local flexibility plan'' means a comprehensive plan for the integration and administration by a local government of assistance provided by the Federal Government under 2 or more eligible Federal assistance programs;

(8) the term ''local government'' means a subdivision of a State that is a unit of general local government (as defined under section 6501 of title 31, United States Code);

(9) the term ''low income'' means having an income that is not greater than 200 percent of the Federal poverty income level;

(10) the term ''priority funding'' means giving higher priority (including by the assignment of extra points, if applicable) to applications for Federal assistance submitted by a local government having an approved local flexibility program, by—

(A) a person located in the jurisdiction of such a government; or

(B) a qualified organization eligible for assistance under a covered Federal assistance program included in such a plan;

(11) the term ''qualified organization'' means a private, nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986; and

(12) the term ''State'' means the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, and any Indian tribal government.

(d) DEMONSTRATION PROGRAM.—The Community Enterprise Board shall—

(1) establish and administer a local flexibility demonstration program by approving local flexibility plans in accordance with the provisions of this section;

(2) no later than 180 days after the date of the enactment of this Act, select no more than 30 local governments from no more than 6 States to participate in such program, of which—

(A) 3 States shall each have a population of 3,500,000 or more as determined under the most recent decennial census; and

(B) 3 States shall each have a population of 3,500,000 or less as determined under the most recent decennial census.

(e) PROVISION OF FEDERAL ASSISTANCE IN ACCORDANCE WITH APPROVED LOCAL FLEXIBILITY PLAN.—

(1) PAYMENTS TO LOCAL GOVERNMENTS.—Notwithstanding any other provision of law, amounts available to a local government or a qualified organization under a covered Federal assistance program included in an approved local flexibility plan shall be provided to and used by the local government or organization in accordance with the approved local flexibility plan.

(2) ELIGIBILITY FOR BENEFITS.—An individual or family that is eligible for benefits or services under a covered Federal assistance program included in an approved local flexibility plan may receive those benefits only in accordance with the approved local flexibility plan.

(f) APPLICATION FOR APPROVAL OF LOCAL FLEXIBILITY PLAN.—

(1) IN GENERAL.—A local government may submit to the Community Enterprise Board in accordance with this subsection an application for approval of a local flexibility plan.

(2) CONTENTS OF APPLICATION.—An application submitted under this subsection shall include—

(A) a proposed local flexibility plan that complies with paragraph (3);

(B) certification by the chief executive of the local government, and such additional assurances as may be required by the Community Enterprise Board, that—

(i) the local government has the ability and authority to implement the proposed plan, directly or through contractual or other arrangements, throughout the geographic area in which the proposed plan is intended to apply;

(ii) amounts are available from non-Federal sources to pay the non-Federal share of all covered Federal assistance programs included in the proposed plan; and

(iii) low income individuals and families that reside in that geographic area participated in the development of the proposed plan;

(C) any comments on the proposed plan submitted under paragraph (4) by the Governor of the State in which the local government is located;

(D) public comments on the plan including the transcript of at least 1 public hearing and comments of the appropriate community advisory committee established under subsection (i); and

(E) other relevant information the Community Enterprise Board may require to approve the proposed plan.

(3) CONTENTS OF PLAN.—A local flexibility plan submitted by a local government under this subsection shall include—

(A) the geographic area to which the plan applies and the rationale for defining the area;

(B) the particular groups of individuals, by age, service needs, economic circumstances, or other defining factors, who shall receive services and benefits under the plan;

(C)(i) specific goals and measurable performance criteria, a description of how the plan is expected to attain those goals and criteria;

(ii) a description of how performance shall be measured; and

(D) a system for the comprehensive evaluation of the impact of the plan on participants, the community, and program costs;

(E) the eligible Federal assistance programs to be included in the plan as covered Federal assistance programs and the specific benefits that shall be provided under the plan under such programs, including—

(i) criteria for determining eligibility for benefits under the plan;

(ii) the services available;

(iii) the amounts and form (such as cash, in-kind contributions, or financial instruments) of nonservice benefits; and

(iv) any other descriptive information the Community Enterprise Board considers necessary to approve the plan;

(F) except for the requirements under subsection (h)(2)(C), any Federal statutory or regulatory requirement applicable under a covered Federal assistance program included in the plan, the waiver of which is necessary to implement the plan;

(G) fiscal control and related accountability procedures applicable under the plan;

(H) a description of the sources of all non-Federal funds that are required to carry out covered Federal assistance programs included in the plan;

(I) written consent from each qualified organization for which consent is required under subsection (e)(2)(B); and

(J) other relevant information the Community Enterprise Board may require to approve the plan.

(4) PROCEDURE FOR APPLYING.—(A) To apply for approval of a local flexibility plan, a local government shall submit an application in accordance with this subsection to the Governor of the State in which the local government is located.

(B) A Governor who receives an application from a local government under subparagraph (A) may, by no later than 30 days after the date of that receipt—

(i) prepare comments on the proposed local flexibility plan included in the application;

(ii) describe any State laws which are necessary to waive for successful implementation of a local plan; and

(iii) submit the application and comments to the Community Enterprise Board.

(C) If a Governor fails to act within 30 days after receiving an application under subparagraph (B), the applicable local government may submit the application to the Community Enterprise Board.

(g) REVIEW AND APPROVAL OF LOCAL FLEXIBILITY PLANS.—

(1) REVIEW OF APPLICATIONS.—Upon receipt of an application for approval of a local flexibility plan under this section, the Community Enterprise Board shall—

(A) approve or disapprove all or part of the plan within 45 days after receipt of the application;

(B) notify the applicant in writing of that approval or disapproval by not later than 15 days after the date of that approval or disapproval; and

(C) in the case of any disapproval of a plan, include a written justification of the reasons for disapproval in the notice of disapproval sent to the applicant.

(2) APPROVAL.—(A) The Community Enterprise Board may approve a local flexibility plan for which an application is submitted under this section, or any part of such a plan, if a majority of members of the Board determines that—

(i) the plan or part shall improve the effectiveness and efficiency of providing benefits under covered Federal programs included in the plan by reducing administrative inflexibility, duplication, and unnecessary expenditures;

(ii) the applicant local government has adequately considered, and the plan or part of the plan appropriately addresses, any effect that administration of each covered Federal program under the plan or part of the plan shall have on administration of the other covered Federal programs under that plan or part of the plan;

(iii) the applicant local government has or is developing data bases, planning, and evaluation processes that are adequate for implementing the plan or part of the plan;

(iv) the plan shall more effectively achieve Federal assistance goals at the local level and shall better meet the needs of local citizens;

(v) implementation of the plan or part of the plan shall adequately achieve the purposes of this title and of each covered Federal assistance program under the plan or part of the plan;

(vi) the plan and the application for approval of the plan comply with the requirements of this section;

(vii) the plan or part of the plan is adequate to ensure that individuals and families that receive benefits under covered Federal assistance programs included in the plan or part shall continue to receive benefits that meet the needs intended to be met under the program;

(viii) the qualitative level of those benefits shall not be reduced for any individual or family; and

(ix) the local government has—

(I) waived the corresponding local laws necessary for implementation of the plan; and

(II) sought any necessary waivers from the State.

(B) The Community Enterprise Board may not approve any part of a local flexibility plan if—

(i) implementation of that part would result in any increase in the total amount of

obligations or outlays of discretionary appropriations or direct spending under covered Federal assistance programs included in that part, over the amounts of such obligations and outlays that would occur under those programs without implementation of the part; or

(ii) in the case of a plan or part that applies to assistance to a qualified organization under an eligible Federal assistance program, the qualified organization does not consent in writing to the receipt of that assistance in accordance with the plan.

(C) The Community Enterprise Board shall disapprove a part of a local flexibility plan if a majority of the Board disapproves that part of the plan based on a failure of the part to comply with subparagraph (A).

(D) In approving any part of a local flexibility plan, the Community Enterprise Board shall specify the period during which the part is effective. An approved local flexibility plan shall not be effective after the date of the termination of effectiveness of this section under subsection (*l*)(1).

(E) Disapproval by the Community Enterprise Board of any part of a local flexibility plan submitted by a local government under this section shall not affect the eligibility of a local government, a qualified organization, or any individual for benefits under any Federal program.

(3) MEMORANDA OF UNDERSTANDING.—(A) The Community Enterprise Board may not approve a part of a local flexibility plan unless each local government and each qualified organization that would receive assistance under the plan enters into a memorandum of understanding under this subsection with the Community Enterprise Board.

(B) A memorandum of understanding under this subsection shall specify all understandings that have been reached by the Community Enterprise Board, the local government, and each qualified organization that is subject to a local flexibility plan, regarding the approval and implementation of all parts of a local flexibility plan that are the subject of the memorandum, including understandings with respect to—

(i) all requirements under covered Federal assistance programs that are to be waived by the Community Enterprise Board under subsection (h)(2);

(ii)(I) the total amount of Federal funds that shall be provided as benefits under or used to administer covered Federal assistance programs included in those parts; or

(II) a mechanism for determining that amount, including specification of the total amount of Federal funds that shall be provided or used under each covered Federal assistance program included in those parts;

(iii) the sources of all non-Federal funds that shall be provided as benefits under or used to administer those parts;

(iv) measurable performance criteria that shall be used during the term of those parts to determine the extent to which the goals and performance levels of the parts are achieved; and

(v) the data to be collected to make that determination.

(4) LIMITATION ON CONFIDENTIALITY REQUIREMENTS.—The Community Enterprise Board may not, as a condition of approval of any part of a local flexibility plan or with respect to the implementation of any part of an approved local flexibility plan, establish any confidentiality requirement that would—

(A) impede the exchange of information needed for the design or provision of benefits under the parts; or

(B) conflict with law.

(h) IMPLEMENTATION OF APPROVED LOCAL FLEXIBILITY PLANS; WAIVER OF REQUIREMENTS.

(1) PAYMENTS AND ADMINISTRATION IN ACCORDANCE WITH PLAN.—Notwithstanding any other law, any benefit that is provided under a covered Federal assistance program included in an approved local flexibility plan shall be paid and administered in the manner specified in the approved local flexibility plan.

(2) WAIVER OF REQUIREMENTS.—(A) Notwithstanding any other law and subject to subparagraphs (B) and (C), the Community Enterprise Board may waive any requirement applicable under Federal law to the administration of, or provision of benefits under, any covered Federal assistance program included in an approved local flexibility plan, if that waiver is—

(i) reasonably necessary for the implementation of the plan; and

(ii) approved by a majority of members of the Community Enterprise Board.

(B) The Community Enterprise Board may not waive a requirement under this subsection unless the Board finds that waiver of the requirement shall not result in a qualitative reduction in services or benefits for any individual or family that is eligible for benefits under a covered Federal assistance program.

(C) The Community Enterprise Board may not waive any requirement under this subsection—

(i) that enforces any constitutional or statutory right of an individual, including any right under—

(I) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(II) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(III) title IX of the Education Amendments of 1972 (86 Stat. 373 et seq.);

(IV) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); or

(V) the Americans with Disabilities Act of 1990;

(ii) for payment of a non-Federal share of funding of an activity under a covered Federal assistance program; or

(iii) for grants received on a maintenance of effort basis.

(3) SPECIAL ASSISTANCE.—To the extent permitted by law, the head of each Federal agency shall seek to provide special assistance to a local government or qualified organization to support implementation of an approved local flexibility plan, including expedited processing, priority funding, and technical assistance.

(4) EVALUATION AND TERMINATION.—(A) A local government, in accordance with regulations issued by the Community Enterprise Board, shall—

(i) submit such reports on and cooperate in such audits of the implementation of its approved local flexibility plan; and

(ii) periodically evaluate the effect implementation of the plan has had on—

(I) individuals who receive benefits under the plan;

(II) communities in which those individuals live; and

(III) costs of administering covered Federal assistance programs included in the plan.

(B) No later than 90 days after the end of the 1-year period beginning on the date of the approval by the Community Enterprise Board of an approved local flexibility plan of a local government, and annually thereafter, the local government shall submit to the Community Enterprise Board a report on the principal activities and achievements under the plan during the period covered by the report, comparing those achievements to the goals and performance criteria included in the plan under subsection (f)(3)(C).

(C)(i) If the Community Enterprise Board, after consultation with the head of each Federal agency responsible for administering a covered Federal assistance program included in an approved local flexibility plan of a local government, determines—

(I) that the goals and performance criteria included in the plan under subsection (f)(3)(C) have not been met; and

(II) after considering any experiences gained in implementation of the plan, that those goals and criteria are sound;

the Community Enterprise Board may terminate the effectiveness of the plan.

(ii) In terminating the effectiveness of an approved local flexibility plan under this subparagraph, the Community Enterprise Board shall allow a reasonable period of time for appropriate Federal, State, and local agencies and qualified organizations to resume administration of Federal programs that are covered Federal assistance programs included in the plan.

(5) FINAL REPORT; EXTENSION OF PLANS.—(A) No later than 45 days after the end of the effective period of an approved local flexibility plan of a local government, or at any time that the local government determines that the plan has demonstrated its worth, the local government shall submit to the Community Enterprise Board a final report on its implementation of the plan, including a full evaluation of the successes and shortcomings of the plan and the effects of that implementation on individuals who receive benefits under those programs.

(B) The Community Enterprise Board may extend the effective period of an approved local flexibility plan for such period as may be appropriate, based on the report of a local government under subparagraph (A).

(i) COMMUNITY ADVISORY COMMITTEES.—

(1) ESTABLISHMENT.—A local government that applies for approval of a local flexibility plan under this section shall establish a community advisory committee in accordance with this subsection.

(2) FUNCTIONS.—A community advisory committee shall advise a local government in the development and implementation of its local flexibility plan, including advice with respect to—

(A) conducting public hearings;

(B) representing the interest of low income individuals and families; and

(C) reviewing and commenting on all community policies, programs, and actions under the plan which affect low income individuals and families, with the purpose of ensuring maximum coordination and responsiveness of the plan in providing benefits under the plan to those individuals and families.

(3) MEMBERSHIP.—The membership of a community advisory committee shall—

(A) be comprised of—

(i) low income individuals, who shall—

(I) comprise at least one-third of the membership; and

(II) include minority individuals who are participants or who qualify to participate in eligible Federal assistance programs;

(ii) representatives of low income individuals and families;

(iii) persons with leadership experience in the private and voluntary sectors;

(iv) local elected officials;

(v) representatives of participating qualified organizations; and

(vi) the general public; and

(B) include individuals and representatives of community organizations who shall help to enhance the leadership role of the local government in developing a local flexibility plan.

(4) OPPORTUNITY FOR REVIEW AND COMMENT BY COMMITTEE.—Before submitting an application for approval of a final proposed local flexibility plan, a local government shall submit the final proposed plan for review and comment by a community advisory committee established by the local government.

(5) COMMITTEE REVIEW OF REPORTS.—Before submitting annual or final reports on an approved assistance plan, a local government or private nonprofit organization shall submit the report for review and comment to the community advisory committee.

(j) TECHNICAL AND OTHER ASSISTANCE.—

(1) TECHNICAL ASSISTANCE.—(A) The Community Enterprise Board may provide, or direct that the head of a Federal agency provide, technical assistance to a local government or qualified organization in developing information necessary for the design or implementation of a local flexibility plan.

(B) Assistance may be provided under this subsection if a local government makes a request that includes, in accordance with requirements established by the Community Enterprise Board—

(i) a description of the local flexibility plan the local government proposes to develop;

(ii) a description of the groups of individuals to whom benefits shall be provided under covered Federal assistance programs included in the plan; and

(iii) such assurances as the Community Enterprise Board may require that—

(I) in the development of the application to be submitted under this title for approval of the plan, the local government shall provide adequate opportunities to participate to—

(aa) low income individuals and families that shall receive benefits under covered Federal assistance programs included in the plan; and

(bb) governmental agencies that administer those programs; and

(II) the plan shall be developed after considering fully—

(aa) needs expressed by those individuals and families;

(bb) community priorities; and

(cc) available governmental resources in the geographic area to which the plan shall apply.

(2) DETAILS TO BOARD.—At the request of the Chairman of the Community Enterprise Board and with the approval of an agency head who is a member of the Board, agency staff may be detailed to the Community Enterprise Board on a nonreimbursable basis.

(k) COMMUNITY ENTERPRISE BOARD.—

(1) FUNCTIONS.—The Community Enterprise Board shall—

(A) receive, review, and approve or disapprove local flexibility plans for which approval is sought under this section;

(B) upon request from an applicant for such approval, direct the head of an agency that administers a covered Federal assistance program under which substantial Federal assistance would be provided under the plan to provide technical assistance to the applicant;

(C) monitor the progress of development and implementation of local flexibility plans;

(D) perform such other functions as are assigned to the Community Enterprise Board by this section; and

(E) issue regulations to implement this section within 180 days after the date of its enactment.

(2) REPORTS.—No less than 18 months after the date of the enactment of this Act, and annually thereafter, the Community Enterprise Board shall submit a report on the 5 Federal regulations that are most frequently waived by the Community Enterprise Board for local governments with approved local flexibility plans to the President and the Congress. The President shall review the report and determine whether to amend or terminate such Federal regulations.

(*l*) TERMINATION AND REPEAL; REPORT.—

(1) TERMINATION AND REPEAL.—This section is repealed on the date that is 5 years after the date of the enactment of this Act.

(2) REPORT.—No later than 4 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress, a report that—

(A) describes the extent to which local governments have established and implemented approved local flexibility plans;

(B) evaluates the effectiveness of covered Federal assistance programs included in approved local flexibility plans; and

(C) includes recommendations with respect to continuing local flexibility.

BUMPERS AMENDMENT NO. 1513

(Ordered to lie on the table.)

Mr. BUMPERS submitted an amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 74, line 3 add ''independently'' immediately prior to ''decide''.

MCCAIN (AND LIEBERMAN) AMENDMENT NO. 1514

(Ordered to lie on the table.)

Mr. MCCAIN (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the end of the amendment insert the following new section:

SEC. . REPEAL OF MEDICARE AND MEDICAID COVERAGE DATA BANK.

(a) REPEAL.—

(1) IN GENERAL.—Section 13581 of the Omnibus Budget Reconciliation Act of 1993 is hereby repealed.

(2) APPLICATION OF THE SOCIAL SECURITY ACT.—The Social Security Act shall be applied and administered as if section 13581 of the Omnibus Budget Reconciliation Act of 1993 (and the amendments made by such section) had not been enacted.

(b) STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services (hereafter in this subsection referred to as the ''Secretary'') shall conduct a study on how to achieve the objectives of the data bank described in section 1144 of the Social Security Act (as in effect on the day before the date of the enactment of this Act) in the most cost-effective manner, taking into account—

(A) the administrative burden of such data bank on private sector entities and governments,

(B) the possible duplicative reporting requirements of the Health Care Financing Administration in effect on such date of enactment, and

(C) the legal ability of such entities and governments to acquire the required information.

(2) REPORTS.—The Secretary shall report to the Congress on the results of the study described in paragraph (1) by not later than 180 days after the date of the enactment of this Act.

● Mr. MCCAIN. Mr. President, this amendment would eliminate a large and unjustified administrative burden imposed on employers by an ill-considered piece of legislation passed 2 years ago. Specifically, it would repeal the Medicare and Medicaid coverage data bank, section 13581 of OBRA 1993, a law that is extremely expensive, burdensome, punitive, and in my view, entirely unnecessary.

The data bank law requires every employer who offers health care coverage to provide substantial and often difficult-to-obtain information on current and past employees and their dependents, including names, Social Security numbers, health care plans, and period of coverage. Employers that do not satisfy this considerable reporting obligation are subject to substantial penalties, possibly up to $250,000 per year or even more if the failure to report is found to be deliberate.

The purported objective of the data bank law is to ensure reimbursement of costs to Medicare or Medicaid when a third party is the primary payor. This is a legitimate objective. However, if the objective of the data bank is to preserve Medicare and Medicaid funds, why is it necessary to mandate information on all employees, the vast majority of whom have no direct association with either the Medicare or Medicaid Program?

Last year, I introduced S. 1933 to repeal the Medicare and Medicaid coverage data bank. Unfortunately, this bill did not pass in the 103d Congress, in part because of a questionable Congressional Budget Office analysis that estimated that the data bank would save the Federal Government about $1 billion. In contrast, the General Accounting Office found that ''as envisioned, the data bank would have certain inherent problems and likely achieve little or no savings to the Medicare and Medicaid programs.'' Still, due primarily to the fiction that the data bank would save money, S. 1933 was not enacted last year.

The GAO report on the data bank law also found that employers are not certain of their specific reporting obligations, because HCFA has not provided adequate guidance. Much of the information which is required is not typically collected by employers, such as Social Security numbers of dependents and certain health insurance information. Some employers have even questioned whether it is legal for them under various privacy laws to seek to obtain the required information.

The GAO report further found that employers are facing significant costs in complying with the reporting requirements, including the costs of redesigning their payroll and personnel systems. It cites one company with 44,000 employees that would have costs of approximately $52,000 and another company with 4,000 employees that would have costs of $12,000. Overall, the American Payroll Association estimated last year that this requirement will cost between $50,000 and $100,000 per company.

I would add that the reporting requirement applies only to employers that provide health insurance coverage to their employees. It is unconscionable that we are adding costs and penalties to those who have been most diligent in providing health coverage to their employees. The last thing that the Federal Government should do is impose disincentives to employee health care coverage, which is one of

the unintended consequences of the data bank law.

Perhaps the most disturbing aspect of the data bank law is that its enormous costs have little or no corresponding benefit. The GAO report concluded that ''The additional information gathering and record keeping required by the data bank appears to provide little benefit to Medicare or Medicaid in recovering mistaken payments.'' This is in part because HCFA is already obtaining this information in a much more efficient manner than that required under OBRA 1993.

For example, OBRA 1989 provides for HCFA to periodically match Medicare beneficiary data with Internal Revenue Service employment information—the Data Match Program. Also, HCFA directly asks beneficiaries about primary payor coverage. To the extent that the data bank duplicates these efforts, any potential savings will not be realized. It is clearly preferable to require HCFA to use the information it already has than to require the private sector to provide duplicative information.

The GAO report found that ''the data match not only can provide the same information [as the Data Bank] without raising the potential problems described above, but it can do so at less cost.'' It also recognized that both the data match and data bank processes rely too much on an after-the-fact recovery approach, and recommended enhancing up-front identification of other insurance and avoiding erroneous payments. In this regard, it documented that HCFA has already initiated this prospective approach.

For these and other reasons, the Labor and Human Resources Appropriations report last year contained language prohibiting the use of Federal funds for developing or maintaining the data bank. However, this provision by itself did not revoke the requirement that covered entities must still provide the required information on the health coverage of current and former employees and their families, This would have resulted in the bizarre situation in which covered employers would have had to report the information, but there would have been no data bank to process or retrieve it.

Finally, in response to the public outcry about this Federal mandate, the Health Care Financing Administration [HCFA] indicated that it will not be enforcing the data bank's reporting requirements in fiscal year 1995. It stated that in light of the refusal of Congress to fund the data bank, ''we have agreed to stay an administrative action to implement the current requirements, including the promulgation of reporting forms and instructions. Therefore, we will not expect employers to compile the necessary information or file the required reports. Likewise, no sanctions will be imposed for failure to file such reports.''

This was a major step in the right direction. However, the data bank and its reporting requirements are still in the law and are still scheduled to be implemented in the next fiscal year. Consequently, this year I have reintroduced my data bank repeal bill, S. 194. I have recently been informed that the CBO has revised its scoring to recognize that the data bank would not save the Federal Government any money. This removed the only argument in favor of the data bank and the only major impediment to its repeal.

Mr. President, the Federal Government continues to impose substantial financial burdens on the private sector without fully accepting its share of the burden to implement a program. We should once again expect the worst case scenario to occur: employers will provide the required information at substantial administrative burden, there will be no data bank in which to make use of it, and even if a data bank were funded and established, the information stored could not be used efficiently to save Medicare or Medicaid funds.

I do not want this repeal to be construed, in any way, as opposition to HCFA obtaining the information it needs to administer the Medicare and Medicaid programs efficiently, and obtaining reimbursement from third party payors when appropriate. To assure that HCFA has the information it needs, the bill also requires the Secretary of HHS to conduct a study and report to Congress on how to achieve the purported objectives of the data bank in the most cost-effective manner possible.

The Secretary's study would have to take into consideration the administrative costs and burden on the private sector and the Government of processing and providing the necessary information versus the benefits and savings that such reporting requirements would produce. It must also consider current HCFA reporting requirements and the ability of entities to obtain the required information legally and efficiently.

Too often, Congress considers only the costs savings to the Federal Government of legislation while ignoring costs to other parties. The Medicare and Medicaid data bank is a case in point. Congress required information on millions of employees to save the Federal Government money. Yet, it will cost employers more money to comply than the Government saves. Congress must stop passing laws that impose large, unjustified, administrative burdens on other entities. It must consider the impact of its actions on the whole economy and not just on the Government.

In summary, the reporting requirement for the Medicare and Medicaid data bank is duplicative, burdensome, ineffective, and unnecessary. The GAO has characterized it as creating an avalanche of unnecessary paperwork for both HCFA and employers. It penalizes employers who provide health care benefits to their workers—exactly the opposite goal we should be pursuing. The data bank should be repealed and a more cost-effective approach should be found to ensure that Medicare and Medicaid are appropriately reimbursed by primary payors.

Mr. President, the 90 associations, organizations, and individual employers in this coalition continue to demand repeal of this law. Their message is clear. The Federal Government must stop imposing unjustified burdens on the private sector.●

KYL AMENDMENT NO. 1515

(Ordered to lie on the table.)

Mr. KYL submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 75, between lines 12 and 13, insert the following:

''(c) In reviewing an agency interpretation of a statute made in a rulemaking or an adjudication, the reviewing court shall—

''(1) hold erroneous and unlawful an agency interpretation that fails to give effect to the unambiguously expressed intent of Congress; or

''(2) if the statute is silent or ambiguous with respect to an issue, hold arbitrary and capricious or an abuse of discretion an agency action for which the agency has—

''(A) refused or failed to consider a permissible construction of the statute on the ground that the statute precludes consideration of that interpretation; or

''(B) failed to explain in a reasoned analysis why the agency selected the interpretation it chose and why it rejected other permissible interpretations of the statute.

''(d) Notwithstanding any other provision of law, the provisions of subsection (c) shall apply to, and supplement, the requirements contained in any statute for the review of final agency action that is not otherwise subject to this section.

JOHNSTON AMENDMENT NO. 1516

Mr. JOHNSTON proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 25, line 19 strike out ''180 days'' and insert in lieu thereof ''one year''.

BAUCUS (AND OTHERS) AMENDMENT NO. 1517

Mr. JOHNSTON (for Mr. BAUCUS, Mr. JOHNSTON, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. REID, Mr. MOYNIHAN, Mr. GLENN, and Mr. KENNEDY) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

Strike out all of section 628 (on p. 42 beginning at line 3 strike out all through line 13 on p. 44) and renumber section 629 as section 628.

On p. 73 in the table of contents for SUBCHAPTER II—ANALYSIS OF AGENCY RULES, replace ''628. Requirements for major environmental management activities'' with ''628. Petition for alternative method of compliance''.

On page 57, lines 6 and 7 strike out the phrase ''or a major environmental management activity''.

KOHL AMENDMENT NO. 1518

(Ordered to lie on the table.)

Mr. KOHL submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 46, insert between lines 4 and 5 the following:

''630. NONAPPLICABILITY TO CERTAIN NEGOTIATED RULES.

''(a) The provisions of subchapters II and III of chapter 6 of title 5, United States Code (as added by section 4 of this Act) shall not apply to any rule developed pursuant to procedures authorized by subchapter III of chapter 5 of such title (relating to consensual rule-making through negotiation), unless the rule to be proposed on promulgated by the agency is significantly different from the consensus developed through such procedures.

''(b) The Administrative Conference of the United States shall, no later than March 31, 1996, submit a report to the appropriate committees of the Congress describing the experience of agencies with consensus procedures that in its judgement are equivalent in effect to those specified by subchapter III of chapter 5 and with respect to which it would be appropriate to make applicable the provisions of subsection (a) of this section. In addition, the report shall include an assessment of the effects of the application of the Federal Advisory Committee Act to consensual rule-making procedures and may make recommendations in connection therewith.''

FORD AMENDMENT NO. 1519

(Ordered to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 14, line 16, strike the semicolon and insert the following: '', and includes Federal approval of a plan or program adopted by 2 or more States that contains parallel or coordinated provisions that were developed in response to a Federal direction or under threat of Federal action;

REID AMENDMENTS NO. 1520–1522

(Ordered to lie on the table.)

Mr. REID submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1520

On page 42, line 19, strike out ''$10,000,000'' and insert in lieu thereof ''$100,000,000''.

AMENDMENT NO. 1521

On page 43, line 7, strike out ''or welfare'' and insert in lieu thereof '', welfare, or the environment''.

AMENDMENT NO. 1522

On page 43, beginning with line 8, strike out all through line 7 on page 44.

CAMPBELL AMENDMENT NO. 1523

(Ordered to lie on the table.)

Mr. CAMPBELL submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 14, after line 16, amend section 621 of title 5, United States Code, as added by section 4(a) of the amendment No. 1487 by inserting after paragraph (5), the following new paragraph:

''(6) The term 'major rule' does not include a rule that approves, in whole or in part, a plan or program that provides for the implementation, maintenance, or enforcement of Federal standards or requirements adopted by an individual State;''

BOXER AMENDMENT NO. 1524

Mrs. BOXER (for herself, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. FEINSTEIN, Mr. DORGAN, Mr. KENNEDY, Mr. REID, Mr. BIDEN, Mr. LEAHY, Ms. MOSELEY-BRAUN, Mr. BUMPERS, and Mr. DASCHLE) proposed an amendment to the bill, supra; as follows:

On page 19, line 7, strike the period and insert the following: ''; or (xiii) a rule intended to implement section 354 of the Public Health Service Act (42 U.S.C. 263b) (as added by section 2 of the Mammography Quality Standards Act of 1992).''.

DOLE AMENDMENT NO. 1525

Mr. DOLE proposed an amendment to amendment No. 1524, proposed by Mrs. BOXER, to the bill, S. 343, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

It is the sense of the Senate that nothing in this Act is intended to delay the timely promulgation of any regulations that would meet a human health or safety threat, including any rules that would reduce illness or mortality from the following: heart disease, cancer, stroke, chronic obstructive lung diseases, pneumonia and influenza, diabetes mellitus, human immunodeficiency virus infection, or water- or food-borne pathogens, polio, tuberculosis, measles, viral hepatitis, syphilis, or all other infectious and parasitic diseases.

GRAHAM AMENDMENTS NO. 1526–1529

(Ordered to lie on the table.)

Mr. GRAHAM submitted four amendments intended to be proposed by him to amendment No. 1487, proposed by Mr. DOLE, to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1526

On page 4, line 9, insert before the semicolon the following: '', including, where practicable, performance-based standards''.

AMENDMENT NO. 1527

On page 7, line 18, insert ''any performance-based standards,'' after ''of,''.

AMENDMENT NO. 1528

On page 77, line 6, insert before the semicolon the following: '', including any performance-based standards''.

AMENDMENT NO. 1529

On page 92, line 20, insert ''the achievement of any performance-based standards and'' after ''statement,''.

CAMPBELL (AND OTHERS) AMENDMENT NO. 1530

(Ordered to lie on the table.)

Mr. CAMPBELL (for himself, Mr. WARNER, and Mr. ROBB) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 14, after line 16, amend section 621 of title 5, United States Code, as added by section 4(a) of the amendment No. 1487 by inserting after paragraph (5), the following new paragraph:

''(6) The term 'major rule' does not include a rule that approves, in whole or in part, a plan or program that provides for the implementation, maintenance, or enforcement of Federal standards or requirements adopted by an individual State that is not part of a coordinated, multi-state program.

HATCH AMENDMENT NO. 1531

Mr. HATCH proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place in the amendment, add the following:

It is the sense of the Senate that nothing in this Act is intended to delay the timely promulgation of any regulations that would meet a human health or safety threat, including any rules that would reduce illness or mortality from the following: heart disease, cancer, stroke, chronic obstructive lung diseases, pneumonia and influenza, diabetes mellitus, human immunodeficiency virus infection, or water or food borne pathogens, polio, tuberculosis, measles, viral hepatitis, syphilis, or all other infectious and parasitic diseases.

BOXER AMENDMENT NO. 1532

Mrs. BOXER (for herself, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. FEINSTEIN, Mr. DORGAN, Mr. KENNEDY, Mr. REID, Mr. BUMPERS, Mr. BIDEN, Mr. LEAHY, Ms. MOSELEY-BRAUN, Mr. DASCHLE, and Mr. COHEN) proposed an amendment to the bill, supra; as follows:

On page 19, line 7, strike the period and insert the following: ''; or (xiii) a rule intended to implement section 354 of the Public Health Service Act (42 U.S.C. 263b) (as added by section 2 of the Mammography Quality Standards Act of 1992).''.

DOMENICI (AND OTHERS) AMENDMENT NO. 1533

Mr. DOMENICI (for himself, Mr. BOND, Mr. BINGAMAN, Mr. COHEN, and Mr. ABRAHAM) proposed an amendment to amendment No. 1487, proposed by Mr. DOLE, to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1533

At the appropriate place in the Dole substitute, add the following new title:

TITLE II—AGENCY RESPONSIVENESS TO SMALL BUSINESSES

Subtitle A—Small Business Advocacy Review

SEC. 201. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) AGENCY.—The term ''agency'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the Environmental Protection Agency; and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the Occupational Safety and Health Administration of the Department of Labor.

(2) AGENCY HEAD.—The term ''agency head'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the Administrator of the Environmental Protection Agency; and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the Assistant Secretary for Occupational Safety and Health of the Department of Labor.

(3) CHAIRPERSON.—The term ''chairperson'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the chairperson of such review panel designated under section 202(a); and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the chairperson of such review panel designated under section 202(b).

(4) CHIEF COUNSEL FOR ADVOCACY.—The term ''Chief Counsel for Advocacy'' means the Chief Counsel for Advocacy of the Small Business Administration.

(5) FINAL RULE.—The term ''final rule'' means any final rule or interim final rule issued by an agency for which a review panel has been established under section 202(c)(2)(A).

(6) OFFICE.—The term ''Office'' means the Office of Advocacy of the Small Business Administration.

(7) REVIEW PANEL.—The term ''review panel'' means—

(A) with respect to a significant rule of the Environmental Protection Agency, an Environmental Small Business Advocacy Review Panel established under section 202(c)(2)(A); and

(B) with respect to a significant rule of the Occupational Safety and Health Administration of the Department of Labor, an Occupational Safety and Health Small Business Advocacy Review Panel established under section 202(c)(2)(A).

(8) RULE.—The term ''rule''—

(A) means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of the agency; and

(B) does not include any rule that is limited to agency organization, management, or personnel matters.

(9) SIGNIFICANT RULE.—The term ''significant rule'' means any rule proposed by an agency that the chairperson, in consultation with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, reasonably estimates would have—

(A) an annual aggregate impact on the private sector in an amount equal to not less than $50,000,000; and

(B) an impact on small businesses.

(10) SMALL BUSINESS.—The term ''small business'' has the same meaning as the term ''small business concern'' in section 3 of the Small Business Act.

SEC. 202. SMALL BUSINESS ADVOCACY CHAIRPERSONS.

(a) CHAIRPERSON OF ENVIRONMENTAL REVIEW PANELS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall designate an employee of the Environmental Protection Agency, who is a member of the Senior Executive Service (as that term is defined in section 2101a of title 5, United States Code) and whose immediate supervisor is appointed by the President, to serve as the chairperson of each Environmental Small Business Advocacy Review Panel and to carry out this subtitle with respect to the Environmental Protection Agency.

(2) DISABILITY OR ABSENCE.—If the employee designated to serve as chairperson under paragraph (1) is unable to serve as chairperson because of disability or absence, the Administrator of the Environmental Protection Agency shall designate another employee who meets the qualifications of paragraph (1) to serve as chairperson.

(b) CHAIRPERSON OF OSHA REVIEW PANELS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Assistant Secretary for Occupational Safety and Health of the Department of Labor shall designate an employee of the Occupational Safety and Health Administration of the Department of Labor, who is a member of the Senior Executive Service (as that term is defined in section 2101a of title 5, United States Code) and whose immediate supervisor is appointed by the President, to serve as the chairperson of each Occupational Safety and Health Small Business Advocacy Review Panel and to carry out the purposes of this subtitle with respect to the Occupational Safety and Health Administration.

(2) DISABILITY OR ABSENCE.—If the employee designated to serve as chairperson under paragraph (1) is unable to serve as chairperson because of disability of absence, the Assistant Secretary for Occupational Safety and Health of the Department of Labor shall designate another employee who meets the qualifications of paragraph (1) to serve as chairperson.

(c) DUTIES OF THE CHAIRPERSON.—

(1) INITIAL DETERMINATION AND NOTIFICATION.—

(A) TIMING.—The chairperson shall take the actions described in subparagraph (B) not later than 45 days before the earlier of—

(i) the date of publication in the Federal Register by an agency of a general notice of proposed rulemaking under section 553(b) of title 5, United States Code, or any other provision of law; or

(ii) the date of publication in the Federal Register by an agency of a proposed rule.

(B) ACTIONS.—With respect to a proposed rule that is the subject of a publication described in clause (i) or (ii) of subparagraph (A), the chairperson shall—

(i) determine whether the subject proposed rule constitutes a significant rule, as defined in section 201(9); and

(ii) if the proposed rule is determined to constitute a significant rule, notify the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget and the Chief Counsel for Advocacy to appoint review panel members for evaluation of the subject significant rule.

(2) ESTABLISHMENT OF REVIEW PANELS.—

(A) IN GENERAL.—Not later than 15 days after receiving notice under paragraph (1)(B)(ii), or such longer period as the chairperson may allow, review panel members shall be appointed by the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, the Chief Counsel for Advocacy, and the chairperson in accordance with section 203(b).

(B) EXCEPTIONS.—A review panel shall be established in accordance with subparagraph (A) unless the chairperson, in consultation with the Chief Counsel for Advocacy, determines (and notifies the agency in writing of such determination) that—

(i) a good faith effort to secure enough non-Federal employee review panel members necessary to constitute a quorum with respect to the subject significant rule was unsuccessful; and

(ii) compliance with this subtitle is not required with respect to the subject significant rule due to a lack of availability of private sector interests.

(d) DUTIES REGARDING FINAL RULE.—

(1) IN GENERAL.—Not later than 45 days before the issuance of a significant final rule, the chairperson shall—

(A) notify panel members of the intent of the agency to issue a final rule;

(B) provide panel members with a dated draft of the final rule to be issued;

(C) solicit comments from panel members in connection with the duties of the review panel described in section 203(a); and

(D) if the chairperson determines that such action is necessary, call one or more meetings of the review panel and, if a quorum is present, direct the review panel to review, discuss, or clarify any issue related to the subject final rule or the preparation of the report under paragraph (2).

(2) REPORT.—Except as provided in section 204(b), not later than 5 days before the issuance of a final rule, the chairperson shall submit a report in accordance with section 204(a).

SEC. 203. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) GENERAL DUTIES.—Before any publication described in clause (i) or (ii) of section 202(c)(1)(A) of a proposed significant rule, and again before the issuance of such rule as a final rule, the review panel shall, in accordance with this subtitle provide technical guidance to the agency, including guidance relating to—

(1) the applicability of the proposed rule to small businesses;

(2) compliance with the rule by small businesses;

(3) the consistency or redundancy of the proposed rule with respect to other Federal, State, and local laws or regulations and recordkeeping requirements imposed on small businesses; and

(4) any other concerns posed by the proposed rule that may impact significantly upon small businesses.

(b) MEMBERSHIP.—Each review panel shall be composed of—

(1) the chairperson;

(2) not less than 1 nor more than 3 members appointed by the chairperson from among employees of the agency who would be responsible for carrying out the subject significant rule;

(3) 1 member appointed by the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget from among the employees of that office who have specific knowledge of or responsibilities relating to the regulatory responsibilities of the agency that would be responsible for carrying out the subject significant rule;

(4) 1 member appointed by the Chief Counsel for Advocacy from among the employees of the Office; and

(5) not less than 1 nor more than 3 members selected by the Chief Counsel for Advocacy from among individuals who are representatives of—

(A) small businesses that would be impacted by the significant rule;

(B) small business sectors or industries that would be especially impacted by the significant rule; or

(C) organizations whose memberships are comprised of a cross-section of small businesses.

(c) PERIOD OF APPOINTMENT; VACANCIES.—

(1) PERIOD OF APPOINTMENT.—Each review panel member, other than the chairperson, shall be appointed for a term beginning on the date on which the appointment is made and ending on the date on which the report or written record is submitted under section 204.

(2) VACANCIES.—Any vacancy on a review panel shall not affect the powers of the review panel, but shall be filled in the same manner as the original appointment.

(d) QUORUM.—A quorum for the conduct of business by a review panel shall consist of 1 member appointed from each of paragraphs (2) through (5) of subsection (b).

(e) MEETINGS.—

(1) IN GENERAL.—Subject to paragraph (2), the meetings of the review panel shall be at the call of the chairperson.

(2) INITIAL MEETING.—Not later than 15 days after all review panel members necessary to constitute a quorum have been appointed under subsection (b), the chairperson shall conduct the initial meeting of the review panel.

(f) POWERS OF REVIEW PANEL.—

(1) INFORMATION FROM FEDERAL AGENCIES.—A review panel may secure, directly from any Federal department or agency, such information as the review panel considers necessary to carry out this subtitle. Upon request of the chairperson, the head of such department or agency shall furnish such information to the review panel.

(2) POSTAL SERVICES.—A review panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(g) NONCOMPENSATION OF MEMBERS.—

(1) IN GENERAL.—Members of the review panel who are not officers or employees of the Federal Government shall serve without compensation.

(2) FEDERAL EMPLOYEES.—Members of the review panel who are officers or employees of the Federal Government shall serve without compensation in addition to that received for their services as officers or employees of the Federal Government.

(h) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to a review panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(i) CONSULTATION WITH OTHER ENTITIES.—In carrying out this subtitle, the chairperson shall consult and coordinate, to the maximum extent practicable, the activities of the review panel with each office of the agency that is responsible for the provision of data or technical advice concerning a significant rule.

SEC. 204. REPORT.

(a) IN GENERAL.—Except as provided in subsection (b), the chairperson shall, in accordance with section 202(d)(2), submit to the appropriate employees of the agency who would be responsible for carrying out the subject significant rule and to the appropriate committees of the Senate and the House of Representatives a report, which shall include—

(1) the findings and recommendations of the review panel with respect to the significant rule, including both the majority and minority views of the review panel members, regardless of the consensus of opinions that may derive from the meetings of the review panel; and

(2) recommendations regarding whether a survey with respect to the subject significant rule should be conducted under section 207, and—

(A) if so—

(i) a timeframe during which the survey should be conducted, taking into account the time required to implement the rule and to gather appropriate data; and

(ii) any recommendations of the review panel regarding the contents of the survey; and

(B) if not, the reasons why the survey is not recommended.

(b) FAILURE TO SUBMIT REPORT.—If the chairperson fails to submit a report under subsection (a), not later than the date on which the final rule is issued, the chairperson shall—

(1) prepare a written record of such failure detailing the reasons therefore; and

(2) submit a copy of such written record to the head of the agency and to the appropriate committees of the Congress.

SEC. 205. APPLICABILITY OF OTHER LAW; JUDICIAL REVIEW.

(a) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act do not apply to any review panel established in accordance with this subtitle.

(b) PROHIBITION ON JUDICIAL REVIEW.—No action or inaction of a review panel, including any recommendations or advice of a review panel or any procedure or process of a review panel, may be subject to judicial review by a court of the United States under chapter 7 of title 5, United States Code, or any other provision of law.

SEC. 206. SURVEY.

(a) IN GENERAL.—If a review panel makes a recommendation in any report submitted under section 204(a) that a survey should be conducted with respect to a significant rule, the agency shall contract with a private sector auditing firm or other survey-related organization to conduct a survey of a cross-section of the small businesses impacted by the rule.

(b) CONTENTS OF SURVEY.—Each survey conducted under this section shall address the impact of the significant rule on small businesses, including—

(1) the applicability of the rule to various small businesses;

(2) the degree to which the rule is easy to read and comprehend;

(3) the costs to implement the rule;

(4) any recordkeeping requirements imposed by the rule; and

(5) any other technical or general issues related to the rule.

(c) AVAILABILITY OF SURVEY RESULTS.—The results of each survey conducted under this section shall be made available—

(1) to each interested Federal agency; and

(2) upon request, to any other interested party, including organizations, individuals, State and local governments, and the Congress.

Subtitle B—Regulatory Ombudsmen

SEC. 211. SMALL BUSINESS AND AGRICULTURE OMBUDSMEN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) BOARD.—The term 'Board' means a Small Business Regulatory Fairness Board established under subsection (c).

''(2) COVERED AGENCY.—The term 'covered agency' means any agency that, as of the date of enactment of the Comprehensive Regulatory Reform Act of 1995, has promulgated any rule for which a regulatory flexibility analysis was required under section 605 of title 5, United States Code, and any other agency that promulgates any such rule, as of the date of such promulgation.

''(3) OMBUDSMAN.—The term 'ombudsman' means a Regional Small Business and Agriculture Ombudsman designated under subsection (b).

''(4) REGION.—The term 'region' means any area for which the Administrator has established a regional office of the Administration pursuant to section 4(a).

''(5) RULE.—The term 'rule' has the same meaning as in section 601(2) of title 5, United States Code.

''(b) OMBUDSMAN.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Administrator shall designate Regional Small Business and Agriculture Ombudsmen in accordance with this subsection.

''(2) DUTIES.—Each ombudsman designated under paragraph (1) shall—

''(A) on a confidential basis, solicit and receive comments from small business concerns regarding the enforcement activities of covered agencies;

''(B) based on comments received under subparagraph (A), annually assign and publish a small business responsiveness rating to each covered agency;

''(C) publish periodic reports compiling the comments received under subparagraph (A);

''(D) coordinate the activities of the Small Business Regulatory Fairness Board established under subsection (c); and

''(E) establish a toll-free telephone number to receive comments from small business concerns under subparagraph (A).''.

SEC. 212. SMALL BUSINESS REGULATORY FAIRNESS BOARDS.

Section 30 of the Small Business Act (as added by section 211 of this Act) is amended by adding at the end the following new subsection:

''(c) SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Administrator shall establish in each region a Small Business Regulatory Fairness Board in accordance with this subsection.

''(2) DUTIES.—Each Board established under paragraph (1) shall—

''(A) advise the ombudsman on matters of concern to small business concerns relating to the enforcement activities of covered agencies;

''(B) issue advisory findings and recommendations with respect to small business concerns;

''(C) review and approve, prior to publication—

''(i) each small business responsiveness rating assigned under subsection (b)(2)(B); and

''(ii) each periodic report prepared under subsection (b)(2)(C); and

''(D) prepare written opinions regarding the reasonableness and understandability of rules issued by covered agencies.

''(3) MEMBERSHIP.—Each Board shall consist of—

''(A) 1 member appointed by the President;

''(B) 1 member appointed by the Speaker of the House of Representatives;

''(C) 1 member appointed by the Minority Leader of the House of Representatives;

''(D) 1 member appointed by the Majority Leader of the Senate; and

''(E) 1 member appointed by the Minority Leader of the Senate.

''(4) PERIOD OF APPOINTMENT; VACANCIES.—

''(A) PERIOD OF APPOINTMENT.—

''(i) PRESIDENTIAL APPOINTEES.—Each member of the Board appointed under subparagraph (A) of paragraph (2) shall be appointed for a term of 3 years, except that the initial member appointed under such subparagraph shall be appointed for a term of 1 year.

''(ii) HOUSE OF REPRESENTATIVES APPOINTEES.—Each member of the Board appointed under subparagraph (B) or (C) of paragraph (2) shall be appointed for a term of 3 years, except that the initial members appointed under such subparagraphs shall each be appointed for a term of 2 years.

''(iii) SENATE APPOINTEES.—Each member of the Board appointed under subparagraph (D) or (E) of paragraph (2) shall be appointed for a term of 3 years.

''(B) VACANCIES.—Any vacancy on the Board—

''(i) shall not affect the powers of the Board; and

''(ii) shall be filled in the same manner and under the same terms and conditions as the original appointment.

''(5) CHAIRPERSON.—The Board shall select a Chairperson from among the members of the Board.

''(6) MEETINGS.—

''(A) IN GENERAL.—The Board shall meet at the call of the Chairperson.

''(B) INITIAL MEETING.—Not later than 90 days after the date on which all members of the Board have been appointed, the Board shall hold its first meeting.

''(7) QUORUM.—A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

''(8) POWERS OF THE BOARD.—

''(A) HEARINGS.—The Board or, at its direction, any subcommittee or member of the Board, may, for the purpose of carrying out the provisions of this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board determines to be appropriate.

''(B) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested to appear at any hearing of the Board. The per diem and mileage allowances for any witness shall be paid from funds available to pay the expenses of the Board.

''(C) INFORMATION FROM FEDERAL AGENCIES.—Upon the request of the Chairperson, the Board may secure directly from the head of any Federal department or agency such information as the Board considers necessary to carry out this section.

''(D) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(E) DONATIONS.—The Board may accept, use, and dispose of donations of services or property.

''(9) BOARD PERSONNEL MATTERS.—

''(A) COMPENSATION.—Members of the Board shall serve without compensation.

''(B) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.''.

SEC. 213. JUDICIAL REVIEW.

(a) PROHIBITION.—No action or inaction of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board, including any recommendations or advice of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board or any procedure or process of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board, may be subject to judicial review by a court of the United States under chapter 7 of title 5, United States Code, or any other provision of law.

(b) DEFINITIONS.—For purposes of this section—

(1) the term ''Regional Small Business and Agriculture Ombudsman'' means any ombudsman designated under section 30(b) of the Small Business Act, as added by section 211 of this Act.

(2) the term ''Small Business Regulatory Fairness Board'' means any board established under section 30(c) of the Small Business Act, as added by section 212 of this Act.

BROWN AMENDMENT NO. 1534

(Ordered to lie on the table.)

Mr. BROWN submitted an amendment intended to be proposed by him to amendment No. 1534, proposed by Mr. DOLE, supra; as follows:

At the appropriate place, insert the following:

SEC. . EXECUTIVE PREEMPTION OF STATE LAW.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by inserting after section 559 the following new section:

''§ 560. Preemption of State law

''(a) No agency shall construe any authorization in a statute for the issuance of regulations as authorizing preemption of State law by rulemaking or other agency action, unless—

''(1) the statute expressly authorizes issuance of preemptive regulations;

''(2) there is clear and convincing evidence that the Congress intended to delegate to the agency the authority to issue regulations preempting State law; or

''(3) the agency concludes that the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

''(b) Any regulatory preemption of State law shall be narrowly tailored to achieve the objectives of the statute pursuant to which the regulations are promulgated.

''(c) When an agency proposes to act through rulemaking or other agency action to preempt State law, the agency shall provide all affected States notice and an opportunity for appropriate participation in the proceedings.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by adding after the item for section 559 the following:

''560. Preemption of State law.''.

LAUTENBERG (AND OTHERS) AMENDMENT NO. 1535

Mr. LAUTENBERG (for himself, Mr. BAUCUS, Mr. LIEBERMAN, Mr. KERRY, Mr. BRADLEY, Mrs. BOXER, Mr. SIMON Mr. KENNEDY, and Mr. MOYNIHAN) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 72, strike lines 1 through 15.

FEINGOLD (AND OTHERS) AMENDMENT NO. 1536

Mr. FEINGOLD proposed an amendment to the amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

At the appropriate place in the substitute amendment, add the following new section:

SEC. . EQUAL ACCESS TO JUSTICE REFORM.

(a) SHORT TITLE.—This section may be cited as the ''Equal Access to Justice Reform Amendments of 1995''.

(b) AWARD OF COSTS AND FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a)(2) of title 5, United States Code, is amended by inserting after ''(2)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the adjudicative officer may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1)(B) of title 28, United States Code, is amended by inserting after ''(B)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the court may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''.

(c) HOURLY RATE FOR ATTORNEY FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(A)(ii) of title 5, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the agency determines by regulation that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(2)(A)(ii) of title 28, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the court determines that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(d) PAYMENT FROM AGENCY APPROPRIATIONS.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(d) of title 5, United States Code, is amended by adding at the end thereof the following: ''Fees and expenses awarded under this subsection may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(4) of title 28, United States Code, is amended by adding at the end thereof the following: ''Fees and expenses awarded under this subsection may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.''.

(e) OFFERS OF SETTLEMENT.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency of the United States from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(f) ELIMINATION OF SUBSTANTIAL JUSTIFICATION STANDARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) in subsection (a)(1) by striking out all beginning with '', unless the adjudicative officer'' through ''expenses are sought''; and

(B) in subsection (a)(2) by striking out ''The party shall also allege that the position of the agency was not substantially justified.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d) of title 28, United States Code, is amended—

(A) in paragraph (1)(A) by striking out '', unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust'';

(B) in paragraph (1)(B) by striking out ''The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.''; and

(C) in paragraph (3) by striking out'', unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust''.

(g) REPORTS TO CONGRESS.—

(1) ADMINISTRATIVE PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Administrative Conference of the United States shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal agencies under the provisions of section 504 of title 5, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal agencies and administrative proceedings.

(2) JUDICIAL PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Department of Justice shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal districts under the provisions of section 2412 of title 28, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal judicial proceedings.

(h) EFFECTIVE DATE.—The provisions of this section and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act and shall apply only to an administrative complaint filed with a Federal agency or a civil action filed in a United States court on or after such date.

PRYOR (AND FEINGOLD) AMENDMENT NO. 1537

Mr. PRYOR (for himself and Mr. FEINGOLD) proposed an amendment to the amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

At the appropriate place in the substitute amendment, insert the following new section:

SEC. . CONFLICT OF INTEREST RELATING TO COST-BENEFIT ANALYSES AND RISK ASSESSMENTS.

(a) INFORMATION BEARING ON POSSIBLE CONFLICT OF INTEREST.—

(1) DEFINITION.—For purposes of this section, the term ''contract'' means any contract, agreement, or other arrangement, whether by competitive bid or negotiation, entered into with a Federal agency for any cost-benefit analysis or risk assessment under subchapter II or III of chapter 6 of title 5, United States Code (as added by section 4(a) of this Act). This section shall not apply to the provisions of section 633.

(2) IN GENERAL.—When an agency proposes to enter into a contract with a person or entity, such person shall provide to the agency before entering into such contract all relevant information, as determined by the agency, bearing on whether that person has a possible conflict of interest with respect to being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons.

(3) SUBCONTRACTOR INFORMATION.—A person entering into a contract shall ensure, in accordance with regulations prescribed by the head of the agency, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract of more than $10,000.

(b) REQUIRED FINDING THAT NO CONFLICT OF INTEREST EXISTS OR THAT CONFLICTS HAVE BEEN AVOIDED; MITIGATION OF CONFLICT WHEN CONFLICT IS UNAVOIDABLE.—

(1) IN GENERAL.—Subject to paragraph (2), the head of an agency shall not enter into any contract unless the agency head finds, after evaluating all information provided under subsection (a) and any other information otherwise made available that—

(A) it is unlikely that a conflict of interest would exist; or

(B) such conflict has been avoided after appropriate conditions have been included in such contract.

(2) EXCEPTION.—If the head of an agency determines that a conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions in the contract, the agency head may enter into such contract if the agency head—

(A) determines that it is in the best interests of the United States to enter into the contract; and

(B) includes appropriate conditions in such contract to mitigate such conflict.

(c) RULES AND REGULATIONS.—No later than 240 days after the date of the enactment of this Act, the Federal Acquisition Review Council shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code, without regard to subsection (a) of such section.

FEINGOLD (AND OTHERS) AMENDMENT NO. 1538

Mr. FEINGOLD (for himself, Mr. PRYOR, and Mr. SIMON) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 57, strike out line 18 through line 25 and insert in lieu thereof the following:

''(B) may exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential financial interest in the outcome, or may include such person if such interest is fully disclosed to the agency, and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person.''

HUTCHISON (AND OTHERS) AMENDMENT NO. 1539

Mrs. HUTCHISON (for herself, Mr. HEFLIN, Mr. HATCH, Mr. NICKLES, Mr. CRAIG, and Mr. LOTT) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

Insert at the appropriate place:

SECTION 709. AGENCY INTERPRETATIONS IN CIVIL AND CRIMINAL ACTIONS.

''(a) No civil or criminal penalty shall be imposed by a court, and no civil administrative penalty shall be imposed by an agency, for the violation of a rule—

''(1) if the court or agency, as appropriate, finds that the rule failed to give the defendant fair warning of the conduct that the rule prohibits or requires; or

''(2) if the court or agency, as appropriate, finds that the defendant—

''(A) reasonably in good faith determined, based upon the language of the rule published in the Federal Register, that the defendant was in compliance with, exempt from, or otherwise not subject to, the requirements of the rule; or

''(B) engaged in the conduct alleged to violate the rule in reliance upon a written statement issued by an appropriate agency official, or by an appropriate official of a State authority to which had been delegated responsibility for implementing or ensuring compliance with the rule, stating that the action complied with, or that the defendant was exempt from, or otherwise not subject to, the requirements of the rule.

''(b) In an action brought to impose a civil or criminal penalty for the violation of a rule, the court, or an agency, as appropriate, shall not give deference to any interpretation of such rule relied on by an agency in

the action that had not been timely published in the Federal Register or communicated to the defendant by the method described in paragraph (a)(2)(B) in a timely manner by the agency, or by a state official described in paragraph (a)(2)(B), prior to the commencement of the alleged violation.

''(c) Except as provided in subsection (d), no agency shall bring any judicial or administrative action to impose a civil or criminal penalty based upon—

''(1) an interpretation of a statute, rule, guidance, agency statement of policy, or license requirement or condition, or

''(2) a written determination of fact made by an appropriate agency official, or state official as described in paragraph (a)(2)(B), after disclosure of the material facts at the time and appropriate review,

if such interpretation or determination is materially different from a prior interpretation or determination made by the agency or the state official described in (a)(2)(B), and if such person, having taken into account all information that was reasonably available at the time of the original interpretation or determination, reasonably relied in good faith upon the prior interpretation or determination.

''(d) Nothing in this section shall be construed to preclude an agency:

''(1) from revising a rule or changing its interpretation of a rule in accordance with sections 552 and 553 of this title, and, subject to the provisions of this section, prospectively enforcing the requirements of such rule as revised or reinterpreted and imposing or seeking a civil or criminal penalty for any subsequent violation of such rule as revised or reinterpreted.

''(2) from making a new determination of fact, and based upon such determination, prospectively applying a particular legal requirement;

''(e) This section shall apply to any action for which a final unappealable judicial order has not been issued prior to the effective date.

GLENN (AND LEVIN) AMENDMENT NO. 1540

Mr. GLENN (for himself and Mr. LEVIN) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 66, after line 15, insert:

''SEC. 643. PUBLIC DISCLOSURE OF INFORMATION.

''(a) OMB RESPONSIBILITY.—The Director or other designated officer to whom authority is delegated under section 642, in carrying out the provisions of such 641, shall establish procedures (covering all employees of the Director or other designated officer) to provide public and agency access to information concerning regulatory review actions, including—

''(1) disclosure to the public on an ongoing basis of information regarding the status of regulatory actions undergoing review;

''(2) disclosure to the public, no later than publication of, or other substantive notice to the public concerning a regulatory action, of—

''(A) all written communications, regardless of form or format, including drafts of all proposals and associated analyses, between the Director or other designated officer and the regulatory agency;

''(B) all written communications, regardless of form or format, between the Director or other designated officer and any person not employed by the executive branch of the Federal Government relating to the substance of a regulatory action;

''(C) a record of all oral communications relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

''(D) a written explanation of any review action and the date of such action; and

''(3) disclosure to the regulatory agency, on a timely basis, of—

''(A) all written communications between the Director or other designated officer and any person who is not employed by the executive branch of the Federal Government;

''(B) a record of all oral communications, and an invitation to participate in meetings, relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

''(C) a written explanation of any review action taken concerning an agency regulatory action.

''(b) AGENCY RESPONSIBILITY.—The head of each agency shall—

''(1) disclose to the public the identification of any regulatory action undergoing review under this section and the date upon which such action was submitted for such review; and

''(2) describe in any applicable rulemaking notice the results of any review under this section, including an explanation of any significant changes made to the regulatory action as a consequence of the review.

On page 66, line 16, strike ''643'' and insert in lieu thereof ''644''.

On page 67, line 1, strike ''644'' and insert in lieu thereof ''645''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 9:30 a.m. on Thursday, July 13, 1995, in closed session, to receive a briefing on the recent F–16 shoot-down in Bosnia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, July 13, 1995, to conduct a hearing on the dollar coin.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet on Thursday, July 13, 1995, beginning at 9:30 a.m. in room SD–215, to conduct a hearing on Medicaid.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, July 13, 1995, beginning at 9:30 a.m., in room 485 of the Russell Senate Office Building on S. 479, a bill to provide for administrative procedures to extend Federal recognition to certain Indian groups.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 9:30 a.m., in room 428A Russell Senate Office Building, to conduct a hearing focusing on the Small Business Investment Company Program.

The PRESIDING OFFICER. Without objection, it is so ordered.

committee on small business

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 9:30 a.m., in room 428A Russell Senate Office Building, to conduct a markup on legislation which is pending in the committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AGING

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Aging of the Committee on Labor and Human Resources be authorized to meet for a hearing on aging Americans access to medical technology, during the session of the Senate on Thursday, July 13, 1995, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON DRINKING WATER, FISHERIES, AND WILDLIFE

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Drinking Water, Fisheries, and Wildlife be granted permission to conduct a hearing Thursday, July 13, at 9 a.m., on reauthorization of the Endangered Species Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Forests and Public Land Management of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, July 13, 1995, for purposes of conducting a subcommittee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to receive testimony on S. 882, to designate certain public lands in the State of Utah as wilderness, and for other purposes.